

## AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT (this “AGREEMENT”) is made as of the 15<sup>th</sup> day of September, 2014 (the “Effective Date”) by and among the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an urban county government of the Commonwealth of Kentucky (“LFUCG”), and the DEPARTMENT OF FINANCE OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (the “Agency”), and CentrepoinTE Parking Company, LLC, a Kentucky limited liability company and its affiliates (“Developer” and, collectively, the “Parties”);

### RECITALS

Whereas, pursuant to the Act, as hereinafter defined, LFUCG by Ordinance No. 265-2008(the Development Area Ordinance”), adopted on December 4, 2008, established Phoenix Park/Courthouse Development Area (the “Development Area”) and pledged certain LFUCG Incremental Revenues, through the execution of a local participation agreement as provided in the Act, dated December, 1, 2008 (the “Local Participation Agreement”) to pay for project costs and redevelopment assistance within the Development Area as more specifically identified within the Local Participation Agreement, and

Whereas, pursuant to the Act LFUCG by Ordinance No. \_\_\_\_-2014 (the “Amended Development Area Ordinance”), adopted on \_\_\_\_\_, 2014, to amend certain documents and agreements and other matters related to the Development Area and pledged certain LFUCG Incremental Revenues, through the execution of an amended and restated local participation agreement as provided in the Act, dated September 15, 2014 (the “Amended and Restated Local Participation Agreement” as hereinafter defined) to pay for project costs and redevelopment

assistance within the Development Area as more specifically identified within the Amended and Restated Local Participation Agreement, a copy of which is attached as Exhibit “A”; and

Whereas, in the Amended and Restated Development Area Ordinance, LFUCG, established the Agency as its agency and instrumentality and constituted authority for the purpose of performing functions related to the oversight, administration, and implementation of the Amended and Restated Development Area Ordinance and Amended and Restated Local Participation Agreement on behalf of LFUCG; and

Whereas, after the adoption of the Amended and Restated Development Area Ordinance and the execution of the Amended and Restated Local Participation Agreement, the Agency applied for and received a pledge of certain State Incremental Revenues through the State’s Signature Project Program as provided in the Act, to pay for designated Approved Public Infrastructure Costs, Financing Costs for Approved Public Infrastructure Costs, and Signature Project Costs within the Development Area, as set forth and identified in a Tax Incentive Agreement between the Kentucky Economic Development Finance Authority (“KEDFA”) and the Agency; and

Whereas, when the Development Area was established the primary private project planned within the Development Area was the CentrePointe Project (the “Project”), which is a mixed-use project consisting of hotel, residential, office and retail uses, together with public infrastructure, including related parking, more specifically described in Exhibit “C” attached hereto; and

Whereas, LFUCG recognizes that the redevelopment of the Development Area and the construction of Project, as contemplated by the terms of this Agreement, will not occur without a

public-private partnership and financial assistance provided to the Project by LFUCG and the Commonwealth of Kentucky (the "State"); and

Whereas, the Parties desire to set forth their mutual agreements, understandings and obligations, in order to facilitate the design, financing, development and construction of the Development Area and the Project.

### STATEMENT OF AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, and in consideration of the premises and the mutual covenants and undertakings contained in this Agreement, the Parties hereby agree and covenant as follows:

### SECTION I

#### Preambles

The Parties hereto agree that the above "preambles" or "preamble clauses" (the above "Recitals") are incorporated herein by reference as if fully restated herein and form a part of the agreement between the parties hereto.

### SECTION II

#### Definitions

For the purposes of this Agreement, the following words and phrases shall have the meanings assigned in this Section II, unless the context clearly indicates that a contrary or different meaning is intended.

A. "Act". Shall mean KRS 65.7041 to KRS 65.7083, KRS 154.30-010-154.30-090, and KRS 139.515.

B. "Affiliate". A corporation or other entity controlled by, controlling or under common control of the Developer.

C. "Agency". Shall mean the Department of Finance of the Lexington-Fayette Urban County Government.

D. "Agreement". This Amended and Restated Master Development Agreement, including all Exhibits attached hereto.

E. "Approved Public Infrastructure Costs". Shall be the Capital Investment approved by KEDFA for the Parking Garage, and set forth in the Tax Incentive Agreement.

F. "Approved Signature Project Costs". Shall have the meaning as provided in the Act.

G. "Bank Documents". Shall mean those documents constituting the private provision of debt financing to private parties.

H. "Capital Investment". Shall have the meaning as provided in the Act.

I. "Developer". Has the meaning given in the introductory paragraph of this Agreement.

J. "Development Area". Shall have the meaning given in the Recitals to this Agreement.

K. "Development Schedule". Shall mean the projected phasing schedule for the Project, attached as Exhibit "D".

L. "Effective Date". Has the meaning given in the introductory paragraph of this Agreement.

M. “Financing Costs”. Shall be the financing costs as defined in the Act for the Approved Public Infrastructure Costs.

N. “Incremental Revenues”. Shall mean the tax revenues pledged to the Development Area by LFUCG as set forth in the Amended and Restated Local Participation Agreement, and by the State, acting through KEDFA, through the execution of the Tax Incentive Agreement with the Agency.

O. “LFUCG”. The Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky created pursuant to KRS 67A.

P. “KEDFA”. Shall mean the Kentucky Economic Development Finance Authority, which is assigned for administrative purposes to the Kentucky Economic Development Cabinet.

Q. “Amended and Restated Local Participation Agreement”. Shall mean the agreement pledging certain LFUCG Incremental Revenues to pay for certain Project Costs within the Development Area as set forth in the Amended and Restated Local Participation Agreement, dated September 15, 2014, as it may be amended, a copy which is attached as Exhibit “A”.

R. “Parking Garage”. Shall mean a 3 story underground parking garage to be constructed as part of the Project on the Project Site.

S. “Private Project Elements”. Shall mean the elements of the Project that shall be privately developed and owned and operated, including the Parking Garage (which is considered public infrastructure), office, retail, residential, hotel, restaurant and other commercial aspects of the Project.

T.     “Private Financing”. Shall mean the financing, including bonds or increment bonds for the Parking Garage, needed to provide for the development and construction of the Private Project Elements or any financing received by the Developer that is not from LFUCG or State.

U.     “Project”. Shall mean the CentrePointe Project within the Development Area, more specifically described in Section IV and Exhibit C attached hereto.

V.     “Project Costs”. Shall mean any capital investment as defined in the Act incurred or expended to undertake the Project.

W.     “Project Site”. Shall mean the entire block in downtown Lexington, Kentucky bounded by S. Upper Street, West Vine Street, South Limestone Street and W. Main Street.

X.     “Signature Project”. Shall have the meaning as provided in the Act.

Y.     “Signature Project Cost”. Shall mean the Capital Investment approved by KEDFA as signature project costs as provided in the Act, and identified within the Tax Incentive Agreement.

Z.     “State”. Shall mean the Commonwealth of Kentucky, including any of its agencies and departments.

AA.    “Tax Incentive Agreement”. Shall mean the agreement pledging certain State Incremental Revenues to pay for designated costs within the Development Area as set forth in the Tax Incentive Agreement, dated as of September 24, 2009, as it was amended as the Second and Restated Tax Incentive Agreement, dated the 12th day of December, 2013, as it may be further amended and/or restated, by and between the Agency and KEDFA, which is attached hereto as Exhibit “B”.

BB. "Unavoidable Delays". Shall mean delays due to labor disputes, lockouts, acts of God, enemy action, terrorist action, civil commotion, riot, governmental regulations not in effect at the date of execution of this Agreement, conditions that could not have been reasonably foreseen by the claiming party, or unavoidable casualty, provided such matters are beyond the reasonable control of the party claiming such delay.

### SECTION III

#### Representations

A. LFUCG and the Agency. LFUCG and Agency possess the requisite authority to enter into this Agreement, and neither LFUCG nor the Agency, in this Agreement or any schedule, exhibit, document or certificate delivered in accordance with the terms of this Agreement, has made any untrue statement of a material fact or failed to state a material fact.

B. Developer Representations. The Developer represents and warrants that: (i) the Developer (a) is a Kentucky limited liability company possessing the requisite authority to enter into this Agreement; (b) is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code; (c) has not, in this Agreement or any schedule, exhibit, document or certificate delivered in accordance with the terms of this Agreement, made any untrue statement of a material fact or failed to state a material fact; and (d) would not enter into this Agreement to undertake and construct the Project but for the commitment of LFUCG and the Agency to provide financial and other incentives to the Project as provided in this Agreement; (ii) the execution of this Agreement and the construction of the Project by the Developer will not knowingly violate any applicable statute, law, ordinance, code, rule or regulation or any restriction or agreement binding upon or otherwise applicable to the Developer; and (iii) there are no undisclosed actions, suits or proceedings pending or threatened against the Developer

which would, if adversely determined, have a material effect on the Developer's ability to enter into this Agreement or construct the Project in accordance with this Agreement.

#### SECTION IV

##### Project

A. The Project being undertaken by the Developer shall be constructed on the Project Site and shall substantially consist of the following Private Project Elements:

1. 315 keys, between two full-service hotels
2. 16 condominiums
3. 75 apartments with 10,700 square feet of ground floor retail space
4. Office building with 150,094 square feet of Class A office space as well as retail space
5. 2 story retail building with a roof top café/bar
6. 3 story underground Parking Garage with approximately 700 parking spaces (which is considered to be public infrastructure).

Several Affiliates have been established to develop, construct and/or operate the various Private Project Elements, and the Developer shall have the right to assign any rights created by this Agreement to one or more of the Affiliates. The anticipated Affiliates for the Project include the following entities, Fayette Land Company, LLC; Centrepointe Vertical, LLC; The Offices at Centrepointe, LLC; The Apartments at Centrepointe, LLC; The Penthouses at Centrepointe LLC; Centrepointe Hotel Partners I, LLC; and Centrepointe Hotel Partners II, LLC. The Developer and its Affiliates shall remain in good standing with the Office of the Secretary of State for the State for the full-term of this Agreement. In addition, the Developer and its Affiliates shall provide a listing of their officers and managers to the Commissioner of Finance on or before June 30 of each year following the execution of this Agreement, with the current officer and managers of the Developer and its Affiliates being listed on Exhibit E attached hereto.



B. The Project shall be financed with Private Financing and equity provided by the Developer, and its Affiliates, subject to the pledge of State and LFUCG Incremental Revenues to reimburse the Developer for certain Capital Investments as set forth in Section V of this Agreement. The Developer shall keep LFUCG informed as to the status and details of the Private Financing for the Project, The Parties acknowledge that construction on the Project has commenced, and that prior to construction starting, the Developer confirmed to the Commissioner of Finance that Developer had obtained the Private Financing, along with a confirmation from the primary lender for each of the respective Private Project Elements, to substantially construct the Private Project Elements of the Project, with the exception of the hotel, apartments and condominiums.

C. The Project shall be constructed in accordance with the Final Design Plans to be approved by the Courthouse Area Design Review Board and LFUCG, and shall be consistent with the Project Plans, attached hereto as Exhibit "C", with the understanding that any amendments to the Project Plans must be approved in accordance with the procedures established by the Courthouse Area Design Review Board.

D. The Developer shall construct the Project upon the Project Site, consistent with the Final Design Plans as provided in Section IV(C) of this Agreement, and upon the acquisition of all necessary permits and approvals required by LFUCG and the State, and in accordance with this Agreement. The Developer agrees to proceed expeditiously to complete construction plans and specifications to a level adequate to obtain all permits and approvals necessary to complete construction of the Project. In addition, as part of the plan approval, the Developer has engaged an independent geotechnical engineer selected by LFUCG, which provided a report to LFUCG

and the Developer, as to the feasibility of constructing the Project, including construction of the underground Parking Garage, in relation to the depth of the water table.

E. Construction Schedule. The Developer agrees to use commercially reasonable efforts to construct the Project in accordance with the Development Schedule attached hereto as Exhibit "D". However, should the Developer encounter an Unavoidable Delay or be delayed by the Developer's inability to obtain necessary government or other permits or required approvals, or any other cause which the Developer and LFUCG agree is justifiable, the Development Schedule may be reasonably extended by LFUCG. For all other reasons, the Developer shall obtain the prior written approval of LFUCG for any substantial amendment to the Development Schedule, which approval shall not be unreasonably withheld.

F. Project Costs. The Developer shall document all Project Costs, Capital Investments, and Financing Costs, including which costs represent Approved Public Infrastructure Costs, Approved Signature Project Costs, and Financing Costs for Approved Public Infrastructure Costs (which are the costs eligible to be reimbursed by the Tax Incentive Agreement and/or the Amended and Restated Local Participation Agreement), associated with construction of the Project and submit such costs to LFUCG and the Agency in the format to be determined by the Agency and KEDFA, to enable the Agency and LFUCG to comply with its reporting requirements as set forth in the Amended and Restated Local Participation Agreement and the Tax Incentive Agreement.

G. Parking Garage. The Developer acknowledges that the ability of the Agency and LFUCG to reimburse Developer from Incremental Revenues, as provided in Section V of this Agreement, for Capital Investments and Financing Costs for the construction of the Parking

Garage, is dependent upon the Parking Garage being considered by the State to be Approved Public Infrastructure within the meaning of the Act. The Developer commits to operate the Parking Garage to provide public parking in order to qualify as Approved Public Infrastructure. This requirement shall be included within any Affiliate agreements relating to the Project, and shall continue so long as Incremental Revenues are being paid to reimburse the Developer for the costs of the Parking Garage as provided in Section V of this Agreement. The Developer agrees to contract with nationally recognized parking garage operator for the operation of the Parking Garage, and shall provide a copy of the contract for the operation of the Parking Garage, and any amendments thereto to the Commissioner of Finance. The Developer agrees to provide other information on the Parking Garage operator and the operation of the Parking Garage as may be requested by the Commissioner of Finance.

H. The Developer shall assist the Agency in complying with any reporting requirements mandated by the Amended and Restated Local Participation Agreement and Tax Incentive Agreement and in calculating the Incremental Revenues that may be due to the Agency from LFUCG and the State. The Developer shall include provisions in any Affiliate agreements, construction agreements or leases relating to the construction or operation of the Project, to require the contractors constructing the Project and businesses operating within the Project to provide information, including federal and state tax identification numbers, etc., to the Agency or other information as may be required by the Agency, relating to the LFUCG and State taxes that may be generated from the Project. In addition, in the event that the Agency retains the services of an independent CPA to certify the Capital Investment or provide other reporting required by

State pursuant to provisions of the Tax Incentive Agreement, the cost for such services shall be paid by Developer.

## SECTION V

### Priority of the Use of Incremental Revenues

Pursuant to the provisions of the Act, the Amended and Restated Local Participation Agreement and the Tax Incentive Agreement, the Development Area and Tax Incentive Agreement has been activated effective January 1, 2013, which will potentially allow for Incremental Revenues to be available to the Agency beginning in calendar year 2014. In consideration of the Developer constructing the Project and complying with the requirements and conditions of Section IV of this Agreement, LFUCG and the Agency agree that priority for the use of the Incremental Revenues received by the Agency from LFUCG and the State shall be as follows:

A. Each year following the Activation of the Development Area until its termination, \$45,000 of the Incremental Revenues received by the Agency pursuant to the Amended and Restated Local Participation Agreement and/or Tax Incentive Agreement shall be retained by the Agency and used to cover administrative and other expenses incurred by the LFUCG or the Agency for the administration and implementation of the Development Area Ordinance, including complying with any reporting requirements set forth in the Amended and Restated Local Participation Agreement and/or Tax Incentive Agreement, and costs for professional services related to this Agreement and/or finalizing any required amendments to the Agreement or Tax Incentive Agreement. It is understood that if in any year the amount of Incremental Revenues received by the Agency are not sufficient to this satisfy the annual amount of \$45,000,

the amount not satisfied may be recovered by the Agency from the Incremental Revenues received by the Agency in future years.

B. After the obligation set forth in Section V(A) of this Agreement has been fully satisfied, \$60,000 of the Incremental Revenues received by the Agency pursuant to the Amended and Restated Local Participation Agreement and/or Tax Incentive Agreement for a ten (10) year period may be expended by the Agency for incentives that may be necessary, as determined by LFUCG in its sole discretion, to pay for relocation costs or other costs to encourage tenants to locate in the Project. It is understood that if in any year the amount of Incremental Revenues received by the Agency are not sufficient to pay this \$60,000 annual amount, the amount not satisfied may be paid by the Agency from the Incremental Revenues received by the Agency in future years.

C. After the annual obligations set forth in Section V(A) and (B) of this Agreement have been fully satisfied, and the Developer meeting its obligations set forth in Section IV of this Agreement, Incremental Revenues received by the Agency pursuant to the Amended and Restated Local Participation Agreement and/or Tax Incentive Agreement shall be annually paid to the Developer to reimburse the Developer for Capital Investment associated for Approved Public Infrastructure Costs, Financing Costs and Signature Project Costs related to the Parking Garage; up to the actual Capital Investments and Financing Costs for the Parking Garage, as certified by the Developer and approved by KEDFA, but not to exceed \$51,000,000 in total. No Incremental Revenues shall be paid to the Developer pursuant to this paragraph V(C) until the Developer has expended documented Project Costs to satisfy the Minimum Capital Investment of \$150,000,000 as set forth in the Tax Incentive Agreement, as amended. LFUCG agrees to

amend the Amended and Restated Local Participation Agreement to provide that the Capital Investments and Financing Costs be eligible costs for reimbursement from LFUCG Incremental Revenues, and shall direct the Agency to request KEDFA to amend the Tax Incentive Agreement to provide the Capital Investments and Financing Costs for the Approved Public Infrastructure and Signature Project Costs, for the Parking Garage, to be eligible for reimbursement from State Incremental Revenues. It is understood that any funds due to reimburse Developer pursuant to this Section V(C) of this Agreement may be pledged by Developer directly to pay the Private Financing incurred by Developer for the Parking Garage, or paid directly, if so directed by the Developer, to any trustee for bonds that may be issued to pay for or reimburse Approved Public Infrastructure Costs, Signature Project Costs, or Financing Costs for Costs for the Approved Public Infrastructure Costs, as provided in the Financing Plan set forth in the Amended and Restated Local Participation Agreement, with the understanding that any bonds or private financing shall not be subject to a pledge of the full faith and credit of LFUCG or be guaranteed by LFUCG.

D. After the obligations set forth in Section V(A) and (B) and (C) of this Agreement have been fully satisfied, Incremental Revenues received by the Agency pursuant to the Amended and Restated Local Participation Agreement and/or Tax Incentive Agreement may be used by the Agency to pay for other eligible capital costs and set forth in the Amended and Restated Local Participation Agreement and/or Tax Incentive Agreement.

E. It is understood by the Parties that after the Activation of the Tax Incentive Agreement any State Incremental Revenues that may be generated and available to be paid by the State to the Agency pursuant to the provisions of the Tax Incentive Agreement, shall be held

in escrow without interest accruing thereon, until the Minimum Capital Investment of \$150,000,000 in documented Project Costs, required for the release of State Incremental Revenues, are certified as provided in the Tax Incentive Agreement. It is further understood that the payment of State Incremental Revenues to the Agency are limited to reimbursement for the Approved Public Infrastructure Costs, Signature Project Costs, and Financing Costs, and other approved costs identified in the Tax Incentive Agreement, that are certified by the Agency to the State and approved by the State.

F. Notwithstanding anything to the contrary, nothing in this Agreement shall be interpreted to commit LFUCG and/or the Agency to pay for or reimburse any Project Costs, except for the Incremental Revenues that may be generated within the Development Area and due to the Agency as provided in the Amended and Restated Local Participation Agreement and the Tax Incentive Agreement.

G. The obligations of the Agency to reimburse costs to the Developer as provided in Section V(C) of this Agreement are contingent upon KEDFA amending Exhibit A of the Tax Incentive Agreement to allow the Capital Investments and the Financing Costs for the Parking Garage to be reimbursed with State Incremental Revenues as Approved Public Infrastructure Costs, Financing Costs, and for the recovery of any Signature Project Costs; and the operation of the Parking Garage by the Developer for public parking as provided in Section IV(G) of this Agreement. In addition, any obligations of LFUCG or the Agency to reimburse Project Costs from Incremental Revenues shall terminate in the event the Tax Incentive Agreement is terminated or not renewed as provided in the Act and the Tax Incentive Agreement.

## SECTION VI

Default  
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If any Party or any Parties (in either case, the “Defaulting Party”) materially breaches or defaults on any of its obligations under this Agreement, the other Parties may give notice that remedial action must be taken by the Defaulting Party within sixty (60) days of the notice. The Defaulting Party shall correct such breach or default within sixty (60) days after such notice; provided, however, if (i) the default is one which cannot with due diligence be remedied by the Defaulting Party within sixty (60) days, and (ii) the Defaulting Party proceeds as promptly as reasonably possible after such notice and with all due diligence to remedy such default, the period after such notice within which to remedy such default shall be extended for such period as may be necessary to remedy the same with all due diligence. If such action is not taken, the non-defaulting parties may, in addition to all other remedies available at law or in equity (including but not limited to specific performance and/or recovery of damages, including reasonable attorneys’ fees and other costs and expenses), terminate this Agreement, or the portion of it affected by the default, by giving ten (10) days written notice to the defaulting Party or Parties.

In the event this Agreement is terminated, LFUCG and the Agency shall be (i) relieved of any executory obligations under this Agreement, (ii) released from undertaking any additional obligations as provided in this Agreement.

## SECTION VII

### Miscellaneous Provisions

A. Term; Survival; Termination. The term of this Agreement shall be from the date of this Agreement until the earliest of (i) the final payment of the Incremental Revenues and the use of such Incremental Revenues pursuant to this Agreement, the Amended and Restated Local Participation Agreement and the Tax Incentive Agreement, or (ii) the termination of this



Agreement in accordance with its terms or (iii) the termination of the Amended and Restated Local Participation Agreement and the Tax Incentive Agreement. This Agreement shall not terminate upon the execution of any agreements required or contemplated by this Agreement, or referred to in this Agreement, and the provisions of this Agreement shall not be deemed to be merged into any such agreements, it being the intent of the Parties that this Agreement shall survive the execution and delivery of any such agreements and shall continue throughout the entire development of the Development Area.

B. Governing Law. The laws of the State shall govern as to the interpretation, validity and effect of this Agreement.

C. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it was held to be invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the parties' essential objectives as expressed herein.

D. Force Majeure. LFUCG, Agency or Developer shall not be deemed to be in default in the performance of any obligation on such parties' part to be performed under this Agreement, other than an obligation requiring the payment of a sum of money, if and so long as the non-performance of such obligation shall be directly caused by Unavoidable Delays; provided, that within fifteen (15) days after the commencement of such Unavoidable Delay, the non performing party shall notify the other party in writing of the existence and nature of any

such Unavoidable Delay and the steps, if any, which the non-performing party shall have taken or planned to take to eliminate such Unavoidable Delay (provided, however, that a failure to give such notice timely shall not be a default hereunder or impair the non-performing party's immunities hereunder or account of Unavoidable Delay, unless the failure to give such notice timely actually prejudices the other party). Thereafter, the non-performing party shall, from time to time, on written request of the other party, keep the other party fully informed, in writing, of further developments concerning such Unavoidable Delay and the effort being made by the non-performing party to perform such obligation as to which it is in default.

E. Notices. Any notice to be given under this Agreement shall be in writing, shall be addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given upon the earliest of (i) three (3) days following deposit in the U.S. Mail with proper postage prepaid, Certified or Registered, Return Receipt Requested, (ii) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (iii) receipt of notice given by telecopy or personal delivery:

If to LFUCG:

Mayor Jim Gray  
Government Center  
200 East Main Street  
Lexington, Kentucky 40507

With Copies to:

Kevin Atkins, Chief Development Officer  
Government Center  
200 East Main Street  
Lexington, Kentucky 40507

Janet M. Graham  
Commissioner of Law  
Government Center  
200 East Main Street  
Lexington, Kentucky 40507

If to the Agency:

William O'Mara  
Commissioner of Finance  
Government Center  
200 East Main Street  
Lexington, Kentucky 40507

With a Copy to:

Janet M. Graham  
Commissioner of Law  
Government Center  
200 East Main Street  
Lexington, Kentucky 40507

With additional Copy to:

Kevin Atkins  
Chief Development Officer  
Government Center  
200 East Main Street  
Lexington, Kentucky 40507

If to Developer:

Ronald C. Tritschler, Chairman  
CentrepoinTE Parking Company, LLC  
250 West Main Street  
Suite 3000  
Lexington, KY 40507

With Copies  
(which shall not  
constitute notice) to:

Job D. (Darby) Turner III  
Bingham Greenebaum Doll LLP  
300 West Vine Street, Ste. 1100  
Lexington, Kentucky 40507

F. Approvals. Whenever a party to this Agreement is required to consent to, or approve, an action by the other party, or to approve any such action to be taken by another party, unless the context clearly specifies a contrary intention, or a specific time limitation, such approval or consent shall be given within ten (10) business days and shall not be unreasonably withheld, conditioned or delayed by the party from whom such approval or consent is required.

G. Entirety of Agreement. As used herein, the term "Agreement" shall mean this Amended and Restated Master Development Agreement and the Exhibits attached hereto. This Agreement embodies the entire agreement and understanding of the parties hereto with respect to the subject matter herein contained, and supersedes all prior agreements, correspondence, arrangements, and understandings relating to the subject matter hereof. No representation, promise, inducement, or statement of intention has been made by any party which has not been embodied in this Agreement or the previous agreements that are referenced herein, and no party shall be bound by or be liable for any alleged representation, promise, inducement, or statement of intention not so set forth. This Agreement may be amended, modified, superseded, or cancelled only by a written instrument signed by all of the Parties hereto, and any of the terms, provisions, and conditions hereof may be waived only by a written instrument signed by the waiving party. Failure of any party at any time or times to require performance of any provision hereof shall not be considered to be a waiver of any succeeding breach of any such provision by any party.

H. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

I. Headings. The headings in this Agreement are included for purposes of convenience only and shall not be considered a part of this Agreement in construing or interpreting any provision hereof.

J. Exhibits. All exhibits to this Agreement shall be deemed to be incorporated herein by reference and made a part hereof, above the signatures of the parties hereto, as if set out in full herein.

K. No Waiver. No waiver of any condition or covenant of this Agreement to be satisfied or performed by LFUCG, Agency or Developer shall be deemed to imply or constitute a further waiver of the same, or any like condition or covenant, and nothing contained in this Agreement nor any act of either party, except a written waiver signed by such party, shall be construed to be a waiver of any condition or covenant to be performed by the other party.

L. Construction. No provisions of this Agreement shall be construed against a Party by reason of such Party having drafted such provisions.

M. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original document.

N. Relationship of the Parties. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the Parties hereto shall be deemed or construed by the Parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the Parties of this Agreement.

O. No Third Party Beneficiary. Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of LFUCG, Agency and the Developer, any

lender providing financing to Developer, and their successors and permitted assigns, and not for the benefit of any other person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.

P. Diligent Performance. With respect to any duty or obligation imposed on a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent and workmanlike manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of the performance thereof. Notwithstanding the above, time is of the essence with respect to any time limit specified herein.

Q. Assignment of Rights and Delegation of Duties. Neither LFUCG nor the Agency shall assign this Agreement without the prior written consent of the Developer, which shall not be unreasonably withheld. The Developer shall have the right to assign this Agreement, or any part hereof, to an Affiliate, provided the assignee shall assume all assigned liabilities and obligations of the Developer hereunder and LFUCG provides its consent in advance in writing, which consent shall not be unreasonably withheld.

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**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands on the date and year first above set forth herein, to be effective as of the Effective Date.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
An urban county government of the Commonwealth of Kentucky

By: \_\_\_\_\_

Jim Gray

Its: Mayor

Date:

Department of Finance of the Lexington-Fayette Urban County Government.

By: \_\_\_\_\_

William O'Mara

Its: Commissioner of Finance

Date:

CentrepoinTE Parking Company, LLC

By: \_\_\_\_\_

Ronald C. Tritschler

Its: Chairman

Date:

Exhibit A

Amended and Restated Local Participation Agreement



**AMENDED AND RESTATED  
LOCAL PARTICIPATION AGREEMENT  
FOR  
PHOENIX PARK/COURTHOUSE DEVELOPMENT AREA  
BY AND BETWEEN  
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
A Kentucky Urban County Government  
AND  
DEPARTMENT OF FINANCE FOR  
THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
September 15, 2014**

**Exhibit A – The Development Area**

**Exhibit B – The Project**

**Exhibit C – Other Elements of the Project to be supported with Incremental Revenues**

**Exhibit D – Listing of Anticipated Incremental Revenues from Development Area**

**Exhibit E - Listing of Old Revenues Collected by the LFUCG from the Development Area**

**Exhibit F - Amended and Restated Master Development Agreement**

INDEX  
TO  
AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT

DATED

September 15, 2014

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

AND

DEPARTMENT OF FINANCE AND ADMINISTRATION FOR THE LEXINGTON-  
FAYETTE URBAN COUNTY GOVERNMENT

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## **AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT**

THIS AMENDED AND RESTATED LOCAL PARTICIPATION AGREEMENT (this “Agreement”) is made as of the 15<sup>th</sup> day of September, 2014 (the “Effective Date”, except that the Commencement Date for the Development Area, as hereinafter defined, shall be December 1, 2008, the date of the original Local Participation Agreement) by and among the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, a Kentucky urban county government (the “LFUCG”), and the DEPARTMENT OF FINANCE OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (the “Agency”), collectively (the “Parties”);

### **RECITALS**

Whereas, pursuant to the Act, as hereinafter defined, LFUCG by Ordinance No. 265-2008 (the Development Area Ordinance”), adopted on December 4, 2008, established Phoenix Park/Courthouse Development Area (the “Development Area”) and pledged certain LFUCG Incremental Revenues, through the execution of a local participation agreement as provided in the Act, dated December, 1, 2008 (the “Local Participation Agreement”) to pay for project costs and redevelopment assistance within the Development Area as more specifically identified within the Local Participation Agreement, and

WHEREAS, subsequent to the execution of the Local Participation Agreement, LFUCG, the Authority, and the Developer, as hereinafter defined, executed a Master Development Agreement relating to the CentrePointe Project, to be constructed within the Development Area, and which pledged certain funds to reimburse the Developer for capital costs associated with a the construction of a public parking garage as part of the CentrePointe Project. The Master Development Agreement has been amended by an Amended and Restated Master Development Agreement, dated September 15, 2014, and attached as Exhibit “F”; and

WHEREAS, pursuant to the Act the LFUCG has on the \_\_\_\_ day of \_\_\_\_\_, 2014, adopted Ordinance Number \_\_\_\_-2014, (the “ Ordinance”), whereby it amended certain documents, including this Agreement, the Amended and Restated Master Development Agreement, and other matters relating to the Development Area, which was established for the purpose of the redevelopment of the Development Area; and

WHEREAS, the LFUCG recognizes and determines that the real property that constitutes the Development Area has been and is presently characterized by vacant parcels and deteriorated structures, that continuation of the physical deterioration within the Development Area will discourage and interfere with the LFUCG’s growth and the improvement of areas surrounding the Development Area, and that the acquisition, financing, construction and development of those improvements and buildings, as identified in Exhibit B herein (collectively, the “Project”), will contribute to the public welfare of the citizens of the LFUCG and the Commonwealth of Kentucky (the “State”) and will thereby materially enhance the area and be in furtherance of the general health and welfare of the citizens of the LFUCG and the State; and

WHEREAS, the Parties recognize that the redevelopment of the Development Area, will not occur without a public-private partnership and financial assistance provided to the Project by the LFUCG and the State; and

WHEREAS, the Parties desire to set forth the duties and responsibilities of the Parties with respect to the administration, financing and pledging of Incremental Revenues in support of the development of the Project within the Development Area; and

WHEREAS, pursuant to the Ordinance, the Council of the LFUCG has authorized the Mayor to execute and enter into this Agreement with the Agency and the LFUCG desires to enter into this Agreement; and

WHEREAS, pursuant to the Ordinance , the Council of the LFUCG has authorized the Commissioner of Finance to execute and enter into this Agreement with the LFUCG and the Agency desires to enter into this Agreement; and

WHEREAS, pursuant to the Act (as hereinafter defined), the LFUCG and the Agency desire to set forth their mutual agreements, understandings and obligations in this Agreement, in order to facilitate development of the Project within the Development Area.

## STATEMENT OF AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, and in consideration of the premises and the mutual covenants and undertakings contained herein, it is agreed and covenanted by and among the Parties hereto as follows:

### SECTION I Preambles

The Parties hereto agree that the above “preambles” or “preamble clauses” are incorporated herein by reference as if fully restated herein and form a part of the agreement among the Parties hereto.

### SECTION II Definitions

For the purposes of this Agreement, the following words and phrases shall have the meanings assigned in this Section II, unless the context clearly indicates that a contrary or different meaning is intended.

1. “Act” or “the Act”. Shall mean KRS 65.7041 to KRS 65.7083, KRS 154.30-010-154.30-090 and KRS 139.515.
2. “Administrative Costs”. Those costs set forth in Amended and Restated Master Development Agreement at Section V(A) and V(B) to be retained by Agency before reimbursing the Developer for any costs relating to the Parking Structure.
3. “Agency”. Shall mean the Department of Finance of the Lexington-Fayette Urban County Government.
4. “Agreement”. Shall mean this Amended and Restated Local Participation Agreement, including all Exhibits attached hereto.

5.     “Approved Public Infrastructure Costs”. Shall be the capital investment as defined in the Act relating to the Parking Structure, and approved by KEDFA in the Tax Incentive Agreement, as it may be amended..

6.     “Approved Signature Project Costs”. Shall be the signature project costs defined in the Act relating to the Parking Structure and approved by KEDFA in the Tax Incentive Agreement, as it may be amended.

7.     “Bonds”. Shall mean any bonds, including, but not limited to increment bonds, notes, or other forms of Private Financing to finance projects within the Development Area, in accordance with the Financing Plan.

8.     “Bond Documents”. Shall mean all of the documents constituting the bond transcript of proceedings in connection with the Bonds.

9.     “Developer” or “Master Developer”. Shall mean CentrepoinTE Parking Company, LLC.

10.    “Development Area”. Shall have the meaning given in the Recitals to this Agreement.

11.    “Effective Date”. Shall have the meaning given in the introductory paragraph of this Agreement.

12.    “Excess Incremental Revenues”. Means Incremental Revenues in excess of the amounts required to support the payment of Bonds and to meet any coverage tests set forth in the Bond Documents.

13.    “Financing Costs”. Shall have the meaning as provided in the Act.

14. "Financing Plan". Shall mean the plan for financing the Project as described in Section X of this Agreement, as it may be amended with the approval of the of the LFUCG and the State.

15. "Incremental Revenues". Shall have the meaning as provided in the Act, except that Incremental Revenues shall not include any portion of the real property ad valorem tax rate of the LFUCG designated for the Transit Authority of the Lexington-Fayette Urban County Government or the Lexington Public Library District.

16. "KEDFA". Shall mean the Kentucky Economic Development Finance Authority.

17. "LFUCG". Shall mean the Lexington-Fayette Urban County Government, a Kentucky urban county government organized under the provisions of Chapter 67A of the Kentucky Revised Statutes.

18. "LFUCG Authorizations". Shall mean those necessary governmental authorizations, resolutions, orders, hearings, notices, ordinances, and other acts, required by laws, rules, or regulations to provide the LFUCG and its officers with the proper authority to perform all obligations of the LFUCG resulting from this Agreement, and perform all other obligations of the LFUCG made necessary by, or resulting from the establishment of the Development Area.

19. "New Revenues". Shall have the meaning as provided in the Act.

20. "Old Revenues". Shall have the meaning as provided in the Act.

21. Ordinance." Shall mean Ordinance No. \_\_\_\_-2014, adopted by the LFUCG on \_\_\_\_\_, 2014.



22. “Parking Structure”. Shall mean the 3-story underground parking garage to be constructed on the project site for the CentrePointe Project.

23. “Private Financing”. Shall mean the financing needed to provide for the development and construction of the Project elements or any financing received by the Developer that is not from LFUCG or the State.

24. “Project”. Shall mean the comprehensive development described in Exhibit B, attached hereto, within the Development Area, more specifically described in Exhibit A, attached hereto.

25. “Redevelopment Assistance”. Shall have the same meaning as provided in the Act.

26. “Special Fund”. Shall mean the Phoenix Park/Courthouse Development Area Special Fund established in the Amended Development Area Ordinance for the purpose of holding the LFUCG’s Incremental Revenues pledged herein in connection with the development of the Project.

27. “State”. Shall mean the Commonwealth of Kentucky, including any of its agencies and departments.

28. “Tax Incentive Agreement”. Shall mean the Tax Incentive Agreement, as it may be amended, between KEDFA and the Agency relating to a pledge of state tax revenues to pay for Approved Public Infrastructure Costs, Approved Signature Project Costs and Financing Costs for Approved Public Infrastructure Costs.

29. “Unavoidable Delays”. Shall mean delays due to labor disputes, lockouts, acts of God, enemy action, civil commotion, riot, governmental regulations not in effect at the date of

execution of this Agreement, conditions that could not have been reasonably foreseen by the claiming party, inability to obtain construction materials or energy, fire, or unavoidable casualty, provided such matters are beyond the reasonable control of the party claiming such delay.

### SECTION III Parties

The parties to this Agreement shall be the LFUCG and the Agency.

### SECTION IV Duties and Responsibilities of LFUCG

The LFUCG shall have the following duties and responsibilities in connection with the development of the Development Area:

1. Provide for the establishment of the LFUCG Special Fund for the collection of Incremental Revenues pledged herein from LFUCG real property *ad valorem* taxes and occupational taxes (consisting of business occupational taxes and payroll taxes), within the Development Area from the Project, which Special Fund is established in the Amended Development Area Ordinance.
2. Pledge eighty percent (80%) of the LFUCG's Incremental Revenues from LFUCG real property *ad valorem* taxes and occupational taxes (consisting of business occupational taxes and payroll taxes), generated within the Development Area for up to a thirty (30) year period to pay for Administrative Costs, to support the payment of the Bonds issued to pay for Approved Public Infrastructure Costs, Approved Signature Project Costs, and Financing Costs for the Approved Public Infrastructure Costs, or to reimburse Developer for such costs that are not paid for by the Bonds (provided that the total payment from Incremental Revenues and from State tax revenues reimbursed pursuant to the Tax Incentive Agreement for Approved

Public Infrastructure Costs, Approved Signature Project Costs and Financing Costs for the Approved Public Infrastructure Costs shall be capped at \$51,000,000), and after those costs are paid, to pay for other Project costs and Redevelopment Assistance as determined by LFUCG related to the Development Area from the list of projects attached as Exhibit "C".

4. Make, in participation with the Agency and the Developer, application to the KEDFA to amend the Tax Incentive Agreement to request State participation as provided in the Amended and Restated Master Development Agreement, this Agreement and as provided in the Financing Plan.

5. Designate the Agency as the entity responsible for the oversight, administration, and implementation of the Amended Development Area Ordinance.

6. Meet at least quarterly with the Developer and the Agency for the purpose of reviewing the progress of the development of the Development Area and prepare an analysis of such progress for distribution to the Agency and the State in accordance with the Act.

7. Require its Department of Finance as the "agency" for purposes of the Act, to prepare by no later than June 1 of each year during the term of this Agreement an annual report and provide same to the LFUCG and KEDFA including, but not limited to: (a) the total real property *ad valorem* taxes, business occupational license taxes and business employee payroll taxes collected within the Development Area during the previous calendar year; (b) a determination of New Revenues collected within the Development Area during the previous calendar year; (c) a summary of debt service paid on outstanding Bonds during the previous calendar year; (d) the amount, if any, of Bonds issued during the previous calendar year, and (e) if no Bonds are issued, the amount, if any, of Incremental Revenues spent from the Special Fund

on Approved Public Infrastructure Costs, Signature Project Costs, Redevelopment Assistance and/or Financing Costs in connection with the Project.

8. Enter any agreements or interlocal agreements that may be required to enable the Kentucky Bond Development Corporation to act as the conduit issuer for the tax exempt bonds for the Parking Structure; and request the Kentucky Bond Development Corporation to act as the conduit issuer of the tax exempt bonds for the Parking Structure supported by the Incremental Revenues as set forth herein, provided any such bonds shall not be subject to a pledge of the full faith and credit of LFUCG, or be guaranteed by LFUCG.

#### SECTION V Duties and Responsibilities of the Agency

The Agency shall have the following duties and responsibilities in connection with the development of the Development Area:

1. Act as the entity responsible for the oversight, administration, and implementation of the Amended Development Area Ordinance.
2. Participate with the LFUCG and Developer in the application to KEDFA, requesting an amendment to the Tax Incentive Agreement as provided in this Agreement, and as provided in the Financing Plan.
3. Meet at least quarterly with the Developer and the LFUCG for the purpose of reviewing the progress of the development of the Development Area and prepare an analysis of such progress for distribution to the Agency and the State in accordance with the Act.
4. Prepare by no later than June 1 of each year during the term of this Agreement an annual report and provide same to the LFUCG and KEDFA including, but not limited to: (a) the total real property *ad valorem* taxes, business occupational license taxes and business employee

payroll taxes collected within the Development Area during the previous calendar year; (b) a determination of New Revenues collected within the Development Area during the previous calendar year; (c) a summary of debt service paid on outstanding Bonds during the previous calendar year; (d) the amount , if any, of Bonds issued during the previous calendar year, and (e) if no Bonds are issued, the amount, if any, of Incremental Revenues spent from the Special Fund on Approved Public Infrastructure Costs, Signature Project Costs, Redevelopment Assistance, and/or Financing Costs in connection with the Project.

5. Enter any agreements or interlocal agreements, or other documents that may be required to enable the Kentucky Bond Development Corporation to act as the conduit issuer for the tax exempt bonds for the Parking Structure.

#### SECTION VI Identification and Pledge of Incremental Revenues

1. The LFUCG hereby pledges eighty percent (80%) of the LFUCG's Incremental Revenues, from LFUCG real property *ad valorem* taxes and occupational taxes (consisting of business occupational taxes and payroll taxes) generated within the Development Area from the Project to first pay for Administrative Costs and then to support the payment of the Bonds issued to pay for, Approved Public Infrastructure Costs, Approved Signature Project Costs and Financing Costs related to the Approved Public Infrastructure Costs as provided in the approved Financing Plan, or to reimburse Developer for such costs not paid for by the Bonds, or to pay for such costs directly as Incremental Revenues are generated in the event that Bonds are not issued (but not to exceed \$51,000,000 from Incremental Revenues and state tax revenues pursuant to the Tax Incentive Agreement), and after those costs are paid from Excess Incremental Revenues, to pay for other Project costs and Redevelopment Assistance as determined by LFUCG related to

the Development Area, for up to a thirty (30) year period Provided, however, no Incremental Revenues for Approved Public Infrastructure Costs, Approved Signature Project Costs, and Financing Costs for the Approved Public Infrastructure Costs shall be released by the Agency until the Minimum Capital Investment as set forth in the Tax Incentive Agreement has been achieved by the Developer and certified by KEDFA. The Incremental Revenues shall be determined by calculating the New Revenues collected from the Development Area, and subtracting the Old Revenues collected from within the Development Area for the base year, which is the calendar year 2008. A listing of the Old Revenues collected by the LFUCG from within the Development Area is attached hereto on Exhibit E.

2. Incremental Revenues pledged by the LFUCG in this Section shall be deposited annually, no later than each June 1<sup>st</sup> after the first calendar year of activation, to the Special Fund and used solely for payment of the costs set forth in Section VI(1) of this Agreement and for no other purpose. Such Special Fund shall be continued and maintained until the Termination Date as defined in the Development Area Ordinance of the Development Area. Amounts in the Special Fund, together with interest accruing thereon, are hereby irrevocably pledged for the payment of the costs set forth in Section VI(1) of this Agreement. If Bonds are issued, this Agreement may be pledged and assigned by the Agency and the Developer or other issuer to a Trustee under a certain Trust Indenture for the Bonds, by and between the Developer, or other issuer, and the Trustee, as it may be amended or restated from time to time, and made a part of the trust estate established thereunder for the security of the Bonds as more particularly set forth therein.

3. At the Termination Date (as defined in the Development Area Ordinance) all amounts remaining in the Special Fund shall be transferred to the General Fund of the LFUCG.

SECTION VII  
Anticipated Benefits to the LFUCG

The LFUCG anticipates receiving substantial benefits as a result of the pledge of their Incremental Revenues to support development of the Development Area as set forth herein. Detailed summaries of Old Revenues and projected New Revenues for the LFUCG on an annual basis during the term of this Agreement are attached as Exhibits D and E hereto. The maximum amount of Incremental Revenues to be paid by the LFUCG shall be eighty percent (80%) of the Incremental Revenues generated from the Development Area, and the maximum number of years the payment of Incremental Revenues to support the development of the Development Area will be made is 30 years.

SECTION VIII  
Description of Development Area

A detailed description of the Development Area is set forth in Exhibit A hereto.

SECTION IX  
Description of Project; Costs

A detailed description of the individual projects that collectively constitute the Project is set forth in Exhibit B hereto. Also included in Exhibit B is an estimate of the costs of construction, acquisition and development of such proposed projects. The elements of the Project planned to be supported or paid for with Incremental Revenues include the payment of Administrative Costs, Approved Public Infrastructure Costs, Approved Signature Project Costs, and Financing Costs for Approved Public Infrastructure Costs, and after those costs are paid, the

costs for those projects listed on the attached Exhibit C, subject to amendment approved by the LFUCG.

SECTION X  
Financing Plan

Land acquisition, capital construction, and financing costs for the Parking Structure will be financed using Incremental Revenues through a combination of Private Financing and proceeds from the issuance of tax-exempt Bonds using the Kentucky Bond Development Corporation as a conduit. The private components of the Project will be financed through Private Financing. The cost for the other projects set forth in Exhibit C will be financed in a structure to be determined by the LFUCG (collectively, the "Financing Plan"). It is understood that the Financing Plan for the Project may be modified as development of the Project progresses and that more specific details of the nature of each aspect of financing the Project shall be more particularly contained in the Bond Documents and other documents at the time that each aspect of the financing needed for the Project is obtained. However, the pledge of Incremental Revenues herein to support payment of the Bonds issued for the Project or to directly support construction of the Project shall not be modified without the specific approval of the LFUCG and State.

**IT IS UNDERSTOOD BY THE PARTIES THAT ANY NOTES OR BONDS ISSUED FOR THE BENEFIT OF ELIGIBLE ELEMENTS OF THE PROJECT AND SECURED BY INCREMENTAL REVENUES SHALL NOT CONSTITUTE A DEBT OF THE LFUCG, THE AGENCY OR THE STATE OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE LFUCG, THE AGENCY OR THE STATE AND THE LFUCG, THE AGENCY AND THE STATE SHALL HAVE NO OBLIGATION, WHATSOEVER,**



**TOWARD THE PAYMENT OF SUCH BONDS BEYOND THE PLEDGE OF  
INCREMENTAL REVENUES AS PROVIDED FOR IN THIS AGREEMENT.**

**SECTION XI**

**Commencement Date; Activation Date; Termination Date**

This Agreement shall commence and be effective as of the date of execution hereof by the LFUCG. The activation date for the pledge of Incremental Revenues as set forth in Section VI hereof shall be January 1, 2013. This Agreement shall terminate 30 years after the activation date as set forth above. This Agreement shall not terminate upon the execution of any deeds or other agreements required or contemplated by this Agreement, or referred to herein, and the provisions of this Agreement shall not be deemed to be merged into the deeds, or any other such deeds or other agreements, it being the intent of the parties hereto that this Agreement shall survive the execution and delivery of any such agreements.

**SECTION XII**

**Default**

If the LFUCG (a "Defaulting Party") shall default in its obligation to make payments of Incremental Revenues set forth herein or in the Bond Documents, the Agency (unless it is the Defaulting Party) and/or the indenture trustee or trustees for outstanding Bonds secured by such Incremental Revenues shall have the power to enforce the provisions of this Agreement and the Bond Documents against the Defaulting Party. If the LFUCG materially breaches or defaults on any of its non-payment related obligations under this Agreement, any other party and/or the indenture trustee or trustees for the outstanding Bonds may give notice that remedial action must be taken within thirty (30) days. The Defaulting Party shall correct such breach or default within thirty (30) days after such notice, provided however that if (i) the default is one which cannot

with due diligence be remedied by the Defaulting Party within thirty (30) days and (ii) the Defaulting Party proceeds as promptly as reasonably possible after such notice and with all due diligence to remedy such default, the period after such notice within which to remedy the default shall be extended for such period of time as may be necessary to remedy the same with all due diligence.

#### SECTION XIII Governing Law

The laws of the State shall govern as to the interpretation, validity and effect of this Agreement.

#### SECTION XIV Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it was held to be invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the parties essential objectives as expressed herein.

#### SECTION XV Force Majeure

The LFUCG shall not be deemed to be in default in the performance of any obligation on such parties' part to be performed under this Agreement, other than an obligation requiring the payment of a sum of money, if and so long as the non-performance of such obligation shall be directly caused by Unavoidable Delays; provided, that within fifteen (15) days after the

commencement of such Unavoidable Delay, the non performing party shall notify the other party in writing of the existence and nature of any such Unavoidable Delay and the steps, if any, which the non-performing party shall have taken or planned to take to eliminate such Unavoidable Delay. Thereafter, the non-performing party shall, from time to time, on written request of the other party, keep the other party fully informed, in writing, of further developments concerning such Unavoidable Delay and the effort being made by the non-performing party to perform such obligation as to which it is in default. All provisions of any construction schedule shall be adjusted in accordance with such Unavoidable Delay.

#### SECTION XVI Notices

Any notice to be given under this Agreement shall be in writing, shall be addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given upon the earliest of (i) three (3) days following deposit in the U.S. Mail with proper postage prepaid, Certified or Registered, (ii) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (iii) receipt of notice given by telecopy or personal delivery:

If to the LFUCG: Mayor Jim Gray  
200 East Main Street  
Lexington, Kentucky 40507

With a Copy to: Commissioner of Law Janet M. Graham  
200 East Main Street  
Lexington, Kentucky 40507

With additional copy to: Kevin Atkins  
Chief Development Officer  
200 East Main Street  
Lexington, Kentucky 40507

If to the Agency: Commissioner of Finance William O'Mara  
200 East Main Street  
Lexington, Kentucky 40507

#### SECTION XVII

##### Approvals

Whenever a party to this Agreement is required to consent to, or approve, an action by the other party, or to approve any such action to be taken by another party, unless the context clearly specifies a contrary intention, or a specific time limitation, such approval or consent shall be given within thirty (30) business days and shall not be unreasonably withheld or delayed by the party from whom such approval or consent is required.

#### SECTION XVIII

##### Entirety of Agreement

As used herein, the term "Agreement" shall mean this Agreement and the Exhibits attached hereto. This Agreement embodies the entire agreement and understanding of the parties hereto with respect to the subject matter herein contained, and supersedes all prior agreements, correspondence, arrangements, and understandings relating to the subject matter hereof. No representation, promise, inducement, or statement of intention has been made by any party which has not been embodied in this Agreement, and no party shall be bound by or be liable for any

alleged representation, promise, inducement, or statement of intention not so set forth. This Agreement may be amended, modified, superseded, or cancelled only by a written instrument signed by all of the parties hereto, and any of the terms, provisions, and conditions hereof may be waived only by a written instrument signed by the waiving party. Failure of any party at any time or times to require performance of any provision hereof shall not be considered to be a waiver of any succeeding breach of any such provision by any part.

SECTION XIX  
Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

SECTION XX  
Headings and Index

The headings in this Agreement and the Index are included for purposes of convenience only and shall not be considered a part of this Agreement in construing or interpreting any provision hereof.

SECTION XXI  
Exhibits

All exhibits to this Agreement shall be deemed to be incorporated herein by reference and made a part hereof, above the signatures of the parties hereto, as if set out in full herein.

SECTION XXII  
No Waiver

No waiver of any condition or covenant of this Agreement to be satisfied or performed by the LFUCG shall be deemed to imply or constitute a further waiver of the same, or any like condition or covenant, and nothing contained in this Agreement nor any act of either party,

except a written waiver signed by such party, shall be construed to be a waiver of any condition or covenant to be performed by the other party.

SECTION XXIII  
Construction

No provisions of this Agreement shall be construed against a party by reason of such party having drafted such provisions.

SECTION XXIV  
Multiple Counterparts

This Agreement may be executed in multiple counterparts, each of which shall constitute an original document.

SECTION XXV  
Relationship of the Parties

Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the Parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association among any of the Parties of this Agreement.

SECTION XXVI  
No Third Party Beneficiary

Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of the LFUCG and the Agency and their successors and permitted assigns, and not for the benefit of any other person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.

SECTION XXVII  
Diligent Performance

With respect to any duty or obligation imposed on a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent and workmanlike manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of the performance thereof. Notwithstanding the above, time is of the essence with respect to any time limit specified herein.

SECTION XXVIII  
Assignment of Rights and Delegation of Duties

No Party to this Agreement may assign this Agreement, or any part hereof without the prior written consent of the other Parties.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands on the date and year first above set forth herein, to be effective as of the Effective Date.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT  
a Kentucky urban county government

Approval as to Form:

By: \_\_\_\_\_  
Jim Gray  
Its: Mayor

\_\_\_\_\_  
Janet M. Graham  
Commissioner of Law for the  
Lexington-Fayette Urban County  
Government

DEPARTMENT OF FINANCE AND  
ADMINISTRATION

By: \_\_\_\_\_

William O'Mara  
Commissioner of Finance



## **EXHIBITS**

**Exhibit A: Development Area Map and Description**

**Exhibit B: The Project**

**Exhibit C: Other Elements of Project to be Financed with Incremental Revenues**

**Exhibit D: Listing of Anticipated Incremental Revenues from Development Area**

**Exhibit E: Listing of Old Revenues Collected by the LFUCG from the Development Area**

**Exhibit F: Amended and Restated Master Development Agreement**

**LFUCG Ordinance Approving LPA**

## **EXHIBIT B**

### **PHOENIX PARK/COURTHOUSE TAX INCREMENT FINANCING AMENDED AND RESTATED PROJECT DESCRIPTION**

The Phoenix Park/Courthouse Project is a 14.25 acre project in Downtown Lexington that will leverage the construction and private development of CentrePointe, a mixed use development consisting of hotel, commercial office, retail and residential apartment and condominium uses.

The project shall substantially consist of the following structures:

- Two full-service hotels with a combined 315 rooms
- 16 condominiums
- 75 apartments with 10,700 square feet of ground floor retail space
- Office building with 150,094 square feet of Class A office space as well as restaurant and retail space
- Two-story retail building with a roof top café/bar
- Three-story underground Parking Garage with approximately 700 parking spaces (which is considered to be public infrastructure)
- Streetscape and 5/3 Pavilion Improvements
- Old Courthouse Improvements
- Courthouse Plaza Improvements
- Phoenix Park Enhancements
- Land acquisition for 5/3 Pavilion

## EXHIBIT C

### PHOENIX PARK/COURTHOUSE

#### OTHER ELEMENTS WITHIN DEVELOPMENT AREA TO BE SUPPORTED BY INCREMENTAL REVENUES

Streetscape and 5/3 Pavilion Improvements:	\$ 6,550,000
Old Courthouse Improvements	\$16,000,000
Courthouse Plaza Improvements	\$ 2,000,000
Phoenix Park Enhancements	\$ 4,000,000
Land acquisition for 5/3 Pavilion:	\$ 1,125,000

<b>Total:</b>	<b>\$29,675,000</b>
---------------	---------------------

# EXHIBIT D

CentrePointe Incremental Tax Revenues Generated for Project										
	Total	2016	2017	2018	2019	2020	2025	2035	2045	30-Year Total
<b>Estimated Tax Revenues from Project</b>										
State Tax Revenues										
State Property Tax Revenues	\$7,711,290	\$190,083	\$199,884	\$197,762	\$201,717	\$205,782	\$227,166	\$276,915	\$337,557	\$7,711,290
State Sales and Use Tax Revenues	\$56,593,882	\$1,205,388	\$1,352,132	\$1,442,166	\$1,486,356	\$1,516,986	\$1,675,874	\$2,042,881	\$2,490,260	\$56,593,882
State Individual Income Tax	\$44,377,518	\$1,073,572	\$1,108,073	\$1,137,026	\$1,161,479	\$1,184,817	\$1,308,252	\$1,594,752	\$1,943,994	\$44,377,518
Total State Tax Revenues	\$108,682,690	\$2,469,043	\$2,659,089	\$2,776,954	\$2,849,553	\$2,907,555	\$3,211,292	\$3,914,547	\$4,771,811	\$108,682,690
Local Tax Revenues										
Local Property Tax Revenues	\$12,881,647	\$317,532	\$323,882	\$330,360	\$336,967	\$343,706	\$379,480	\$462,584	\$563,887	\$12,881,647
Local Occupational License Tax	\$23,773,670	\$575,128	\$593,610	\$609,121	\$622,221	\$634,723	\$700,849	\$854,332	\$1,041,425	\$23,773,670
Total Local Tax Revenues	\$36,655,318	\$892,660	\$917,493	\$939,481	\$959,188	\$978,430	\$1,080,329	\$1,316,915	\$1,605,312	\$36,655,318
Total Tax Revenues	\$145,338,008	\$3,361,702	\$3,577,582	\$3,716,435	\$3,808,741	\$3,885,984	\$4,291,621	\$5,231,462	\$6,377,124	\$145,338,008
"As-Is" Tax Revenues										
State Tax Revenues										
State Property Tax Revenues	\$592,365	\$12,451	\$12,825	\$13,209	\$13,606	\$14,014	\$16,246	\$21,833	\$29,342	\$592,365
State Sales and Use Tax Revenues	\$6,222,405	\$130,790	\$134,714	\$138,755	\$142,918	\$147,206	\$170,652	\$229,342	\$308,216	\$6,222,405
State Individual Income Tax	\$866,104	\$18,205	\$18,751	\$19,314	\$19,893	\$20,490	\$23,753	\$31,922	\$42,901	\$866,104
Total State "As-Is" Tax Revenues	\$7,680,874	\$161,446	\$166,290	\$171,278	\$176,417	\$181,709	\$210,651	\$283,097	\$380,459	\$7,680,874
Local Tax Revenues										
Local Property Tax Revenues	\$1,442,760	\$30,326	\$31,236	\$32,173	\$33,138	\$34,132	\$39,568	\$53,176	\$71,465	\$1,442,760
Local Occupational License Tax	\$1,094,716	\$23,010	\$23,700	\$24,411	\$25,144	\$25,898	\$30,023	\$40,348	\$54,225	\$1,094,716
Total Local "As-Is" Tax Revenues	\$2,537,476	\$53,336	\$54,936	\$56,584	\$58,282	\$60,030	\$69,591	\$93,525	\$125,689	\$2,537,476
Total "As-Is" Tax Revenues	\$10,218,350	\$214,782	\$221,226	\$227,862	\$234,698	\$241,739	\$280,242	\$376,622	\$506,148	\$10,218,350
Estimated Incremental Tax Revenues	\$135,119,658	\$3,146,920	\$3,350,356	\$3,488,573	\$3,574,043	\$3,644,245	\$4,011,379	\$4,854,841	\$5,870,975	\$135,119,658
(-) Retained by State	\$20,200,363	\$461,519	\$497,560	\$521,135	\$534,627	\$545,169	\$600,128	\$726,290	\$878,271	\$20,200,363
(-) Retained by Local	\$6,823,568	\$167,865	\$172,511	\$176,579	\$180,181	\$183,680	\$202,148	\$244,878	\$295,925	\$6,823,568
Net Incr. Tax Rev. Available from Project	\$108,095,726	\$2,517,536	\$2,680,285	\$2,790,858	\$2,859,234	\$2,915,396	\$3,209,103	\$3,883,873	\$4,696,780	\$108,095,726
Incr. Tax Rev. Available for State TIF Program	\$80,801,453	\$1,846,077	\$1,990,239	\$2,084,541	\$2,138,509	\$2,180,676	\$2,400,513	\$2,905,160	\$3,513,082	\$80,801,453
Incr. Tax Rev. Available for Local Participation	\$27,294,273	\$671,459	\$690,045	\$706,318	\$720,725	\$734,720	\$808,590	\$978,712	\$1,183,698	\$27,294,273

EXHIBIT E



Lexington-Fayette Urban County Government  
DEPARTMENT OF FINANCE

Jim Gray  
Mayor

William O'Mara  
Commissioner

May 1, 2014

CentrepoinTE Parking Company, LLC  
250 West Main Street  
Suite 300  
Lexington, KY 40507  
Attn: R. Dudley Webb, Chairman

RE: Tax Increment financing Base Year (2008) Local Tax

The purpose of this letter is to certify the following amounts as the 2008 LFUCG local tax baseline for the CentrepoinTE Development.

The amounts are:

Local Property Tax:	\$25,784
Local Withholding:	\$19,564

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "William O'Mara".

William O'Mara

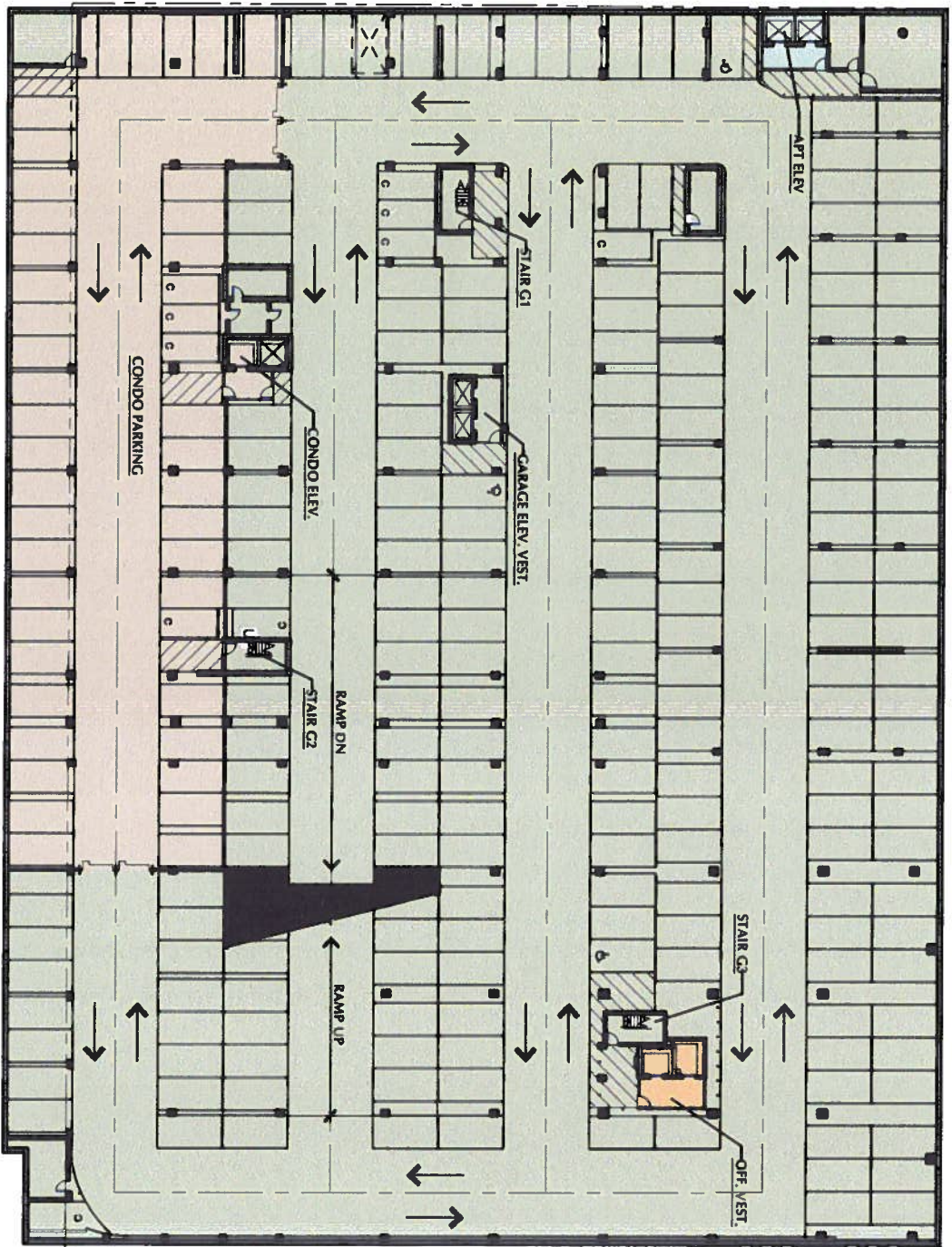
cc: Kevin Atkins, LFUCG  
John Farris, Commonwealth Economics

Exhibit B

Tax Incentive Agreement

## Exhibit C

### Preliminary Design Plans for CentrePointe



**ROOM AREA LEGEND**

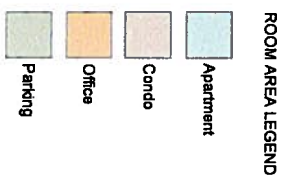
- Apartment
- Condo
- Office
- Parking

Condo	
Full	40
Compact	4
Condo	6
Full	199
Total	249

# **BASEMENT 3** 1" = 30'-0"



## 1" = 30'-0"

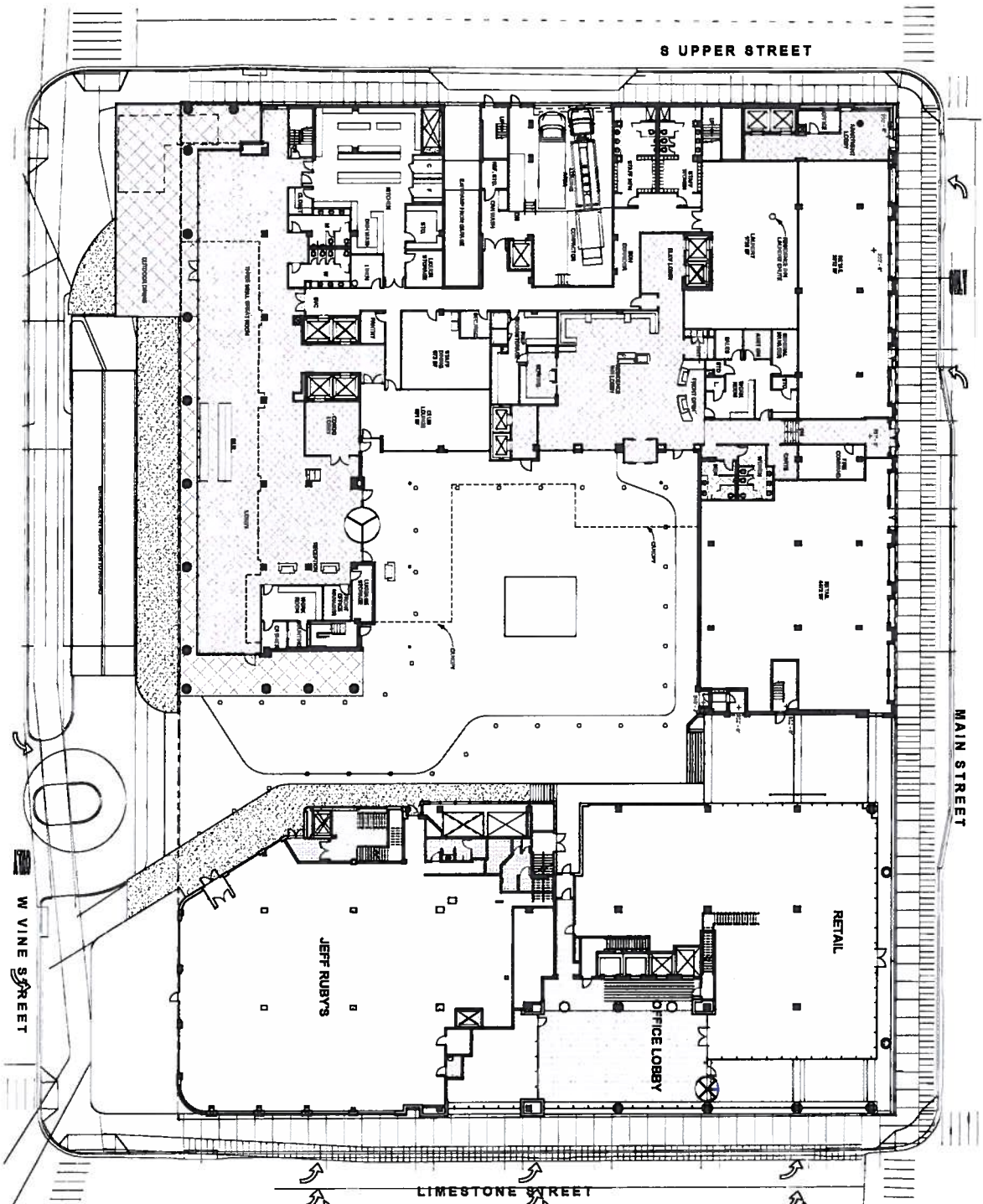


Valet	32
Compact	11
Full	206
Total	249

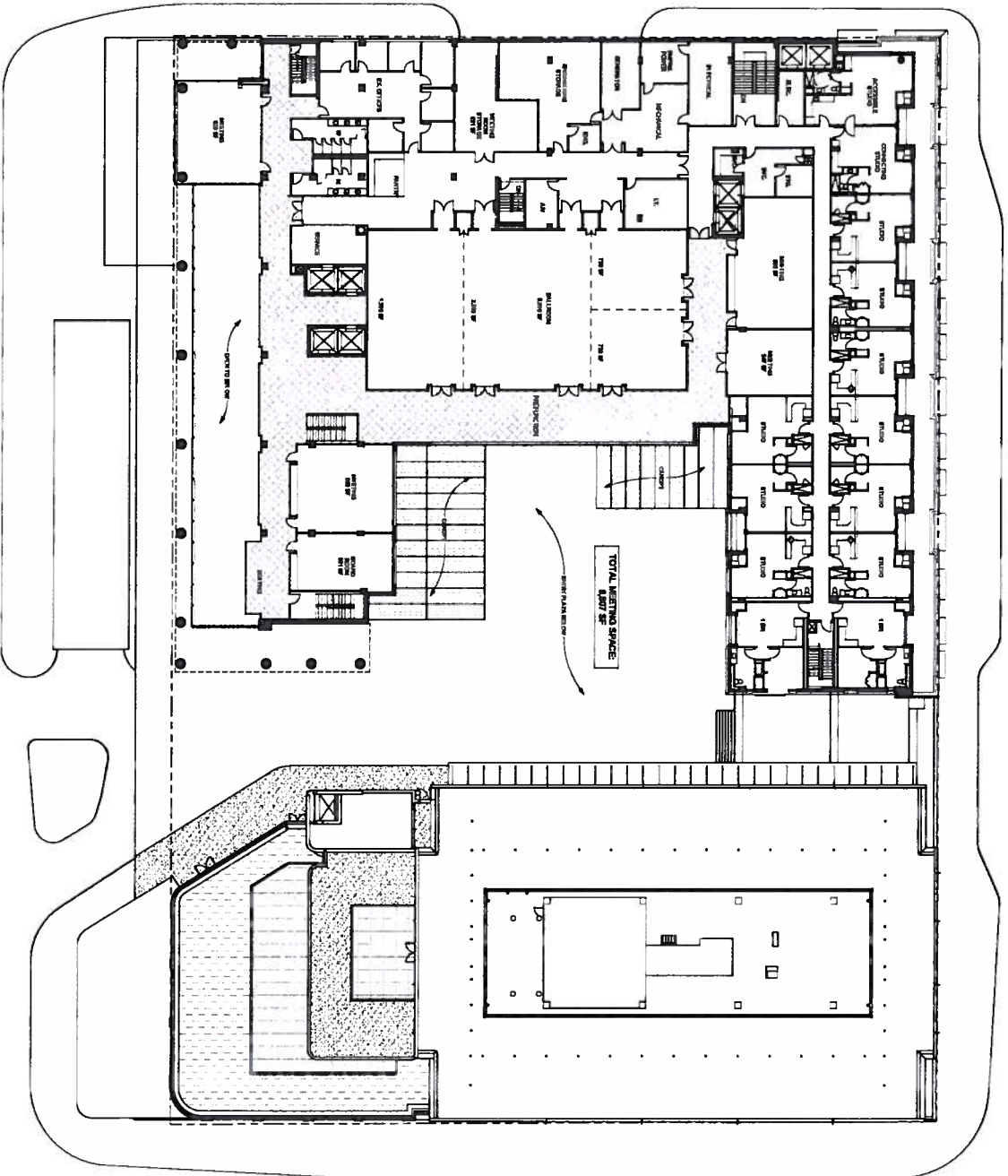


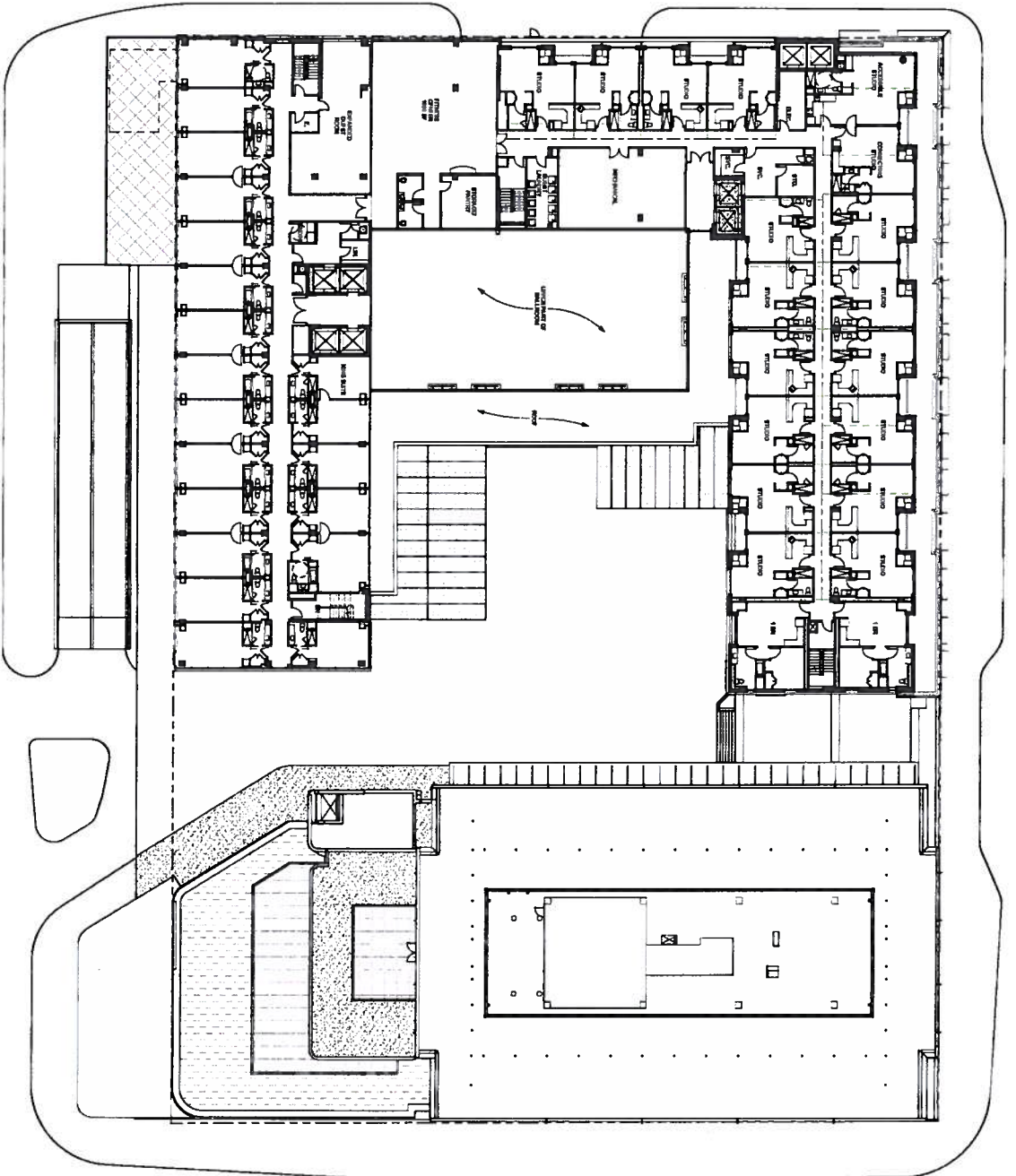


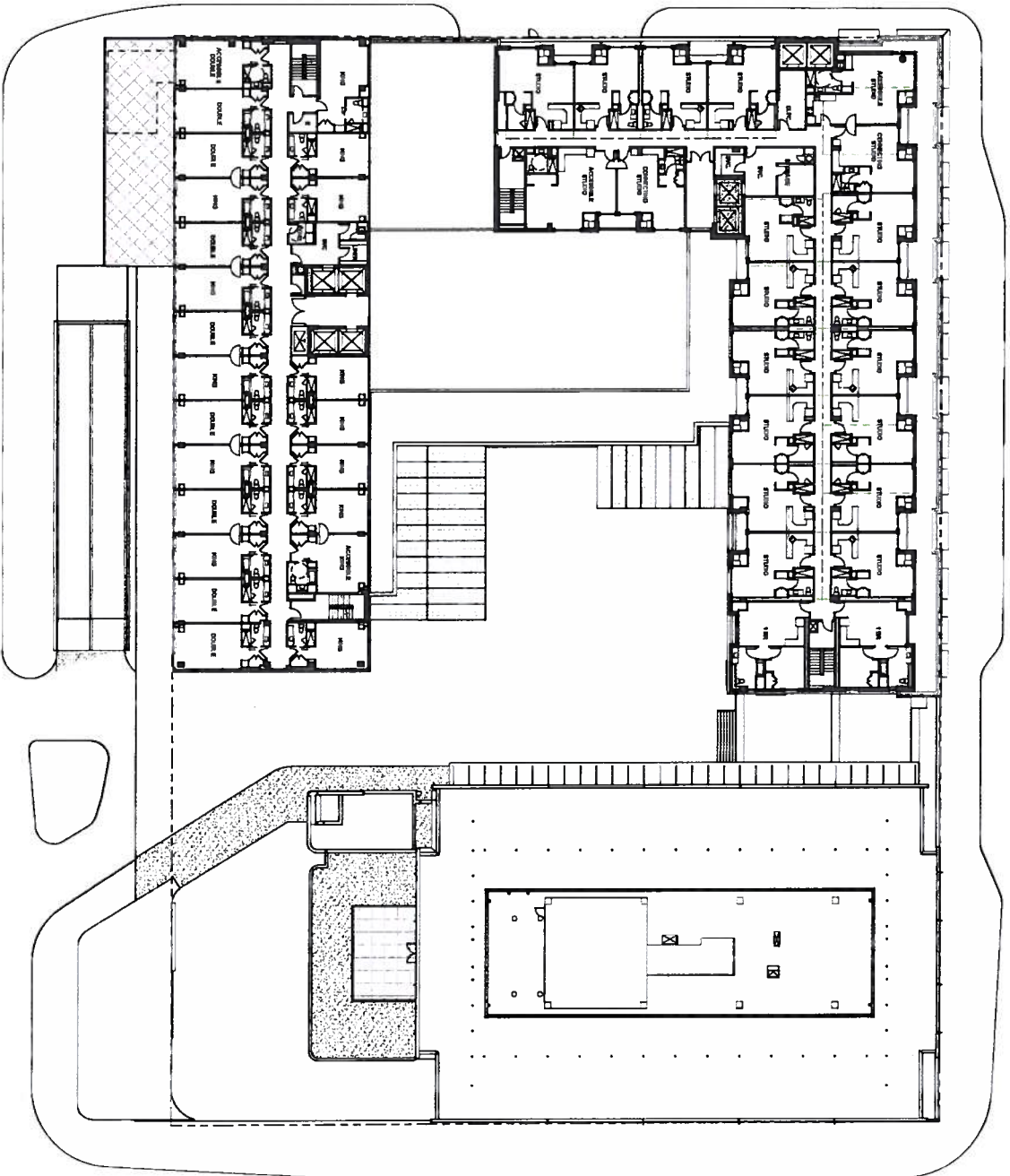
Valet	32
Compact	9
Full	156
Total	197

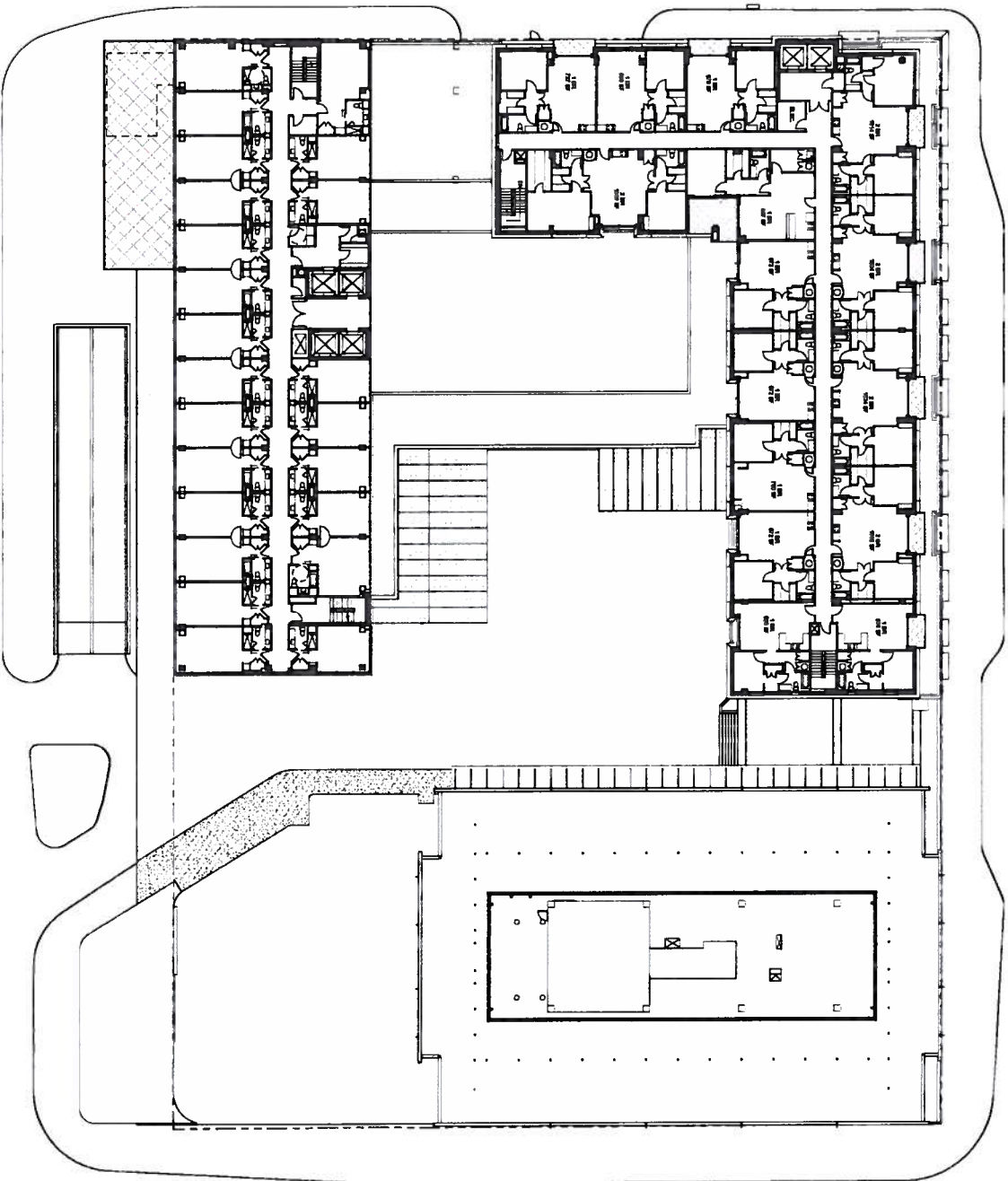














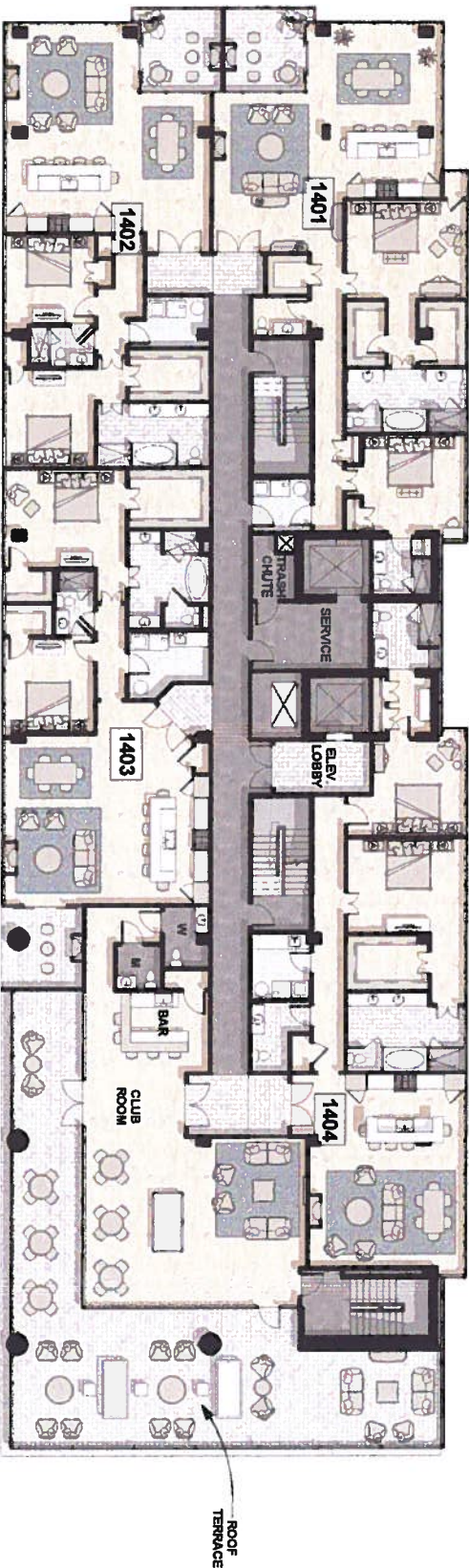
# CONDO LEVEL 1

CentrePointe: Hotel and Residential

RABUN RASCHE RECTOR REECE

9/12/14

GROSS INTERIOR AREA: 10,667 SF			
ROOF TERRACE:			
TOTAL:	1,637 SF	1,401:	2,093 SF
		INTERIOR:	136 SF
CLUB ROOM:	1,280 SF	EXTERIOR:	2,229 SF
TOTAL:		TOTAL:	
		1,402:	1,720 SF
		INTERIOR:	136 SF
		EXTERIOR:	1,856 SF
		TOTAL:	
		1,403:	1,775 SF
		INTERIOR:	130 SF
		EXTERIOR:	1,305 SF
		TOTAL:	
		1,404:	1,981 SF
		INTERIOR:	0 SF
		EXTERIOR:	1,981 SF
		TOTAL:	







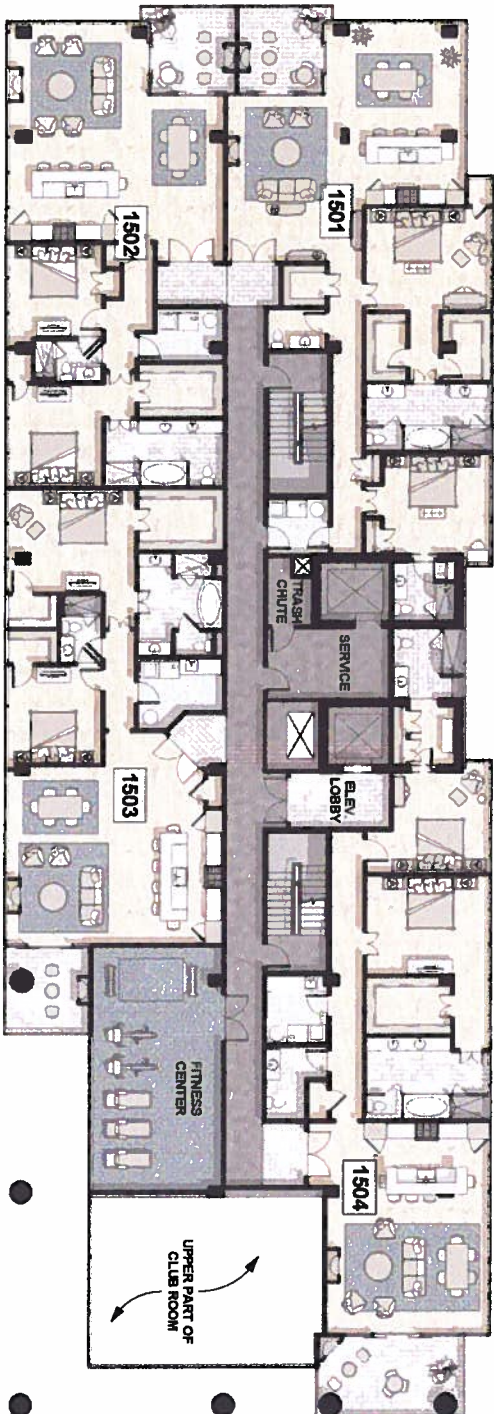
**CENTREPOINTE**  
A Webb Companies Development

## CONDO LEVEL 2

CentrePointe: Hotel and Residential

RABUN RASCHE RECTOR REECE

9/12/14



GROSS INTERIOR AREA: 9,742 SF

1501:	1503:
INTERIOR:	INTERIOR:
EXTERIOR:	EXTERIOR:
TOTAL:	TOTAL:
1502:	1504:
INTERIOR:	INTERIOR:
EXTERIOR:	EXTERIOR:
TOTAL:	TOTAL:

2,093 SF	1,775 SF
118 SF	132 SF
2,219 SF	1,907 SF
1,720 SF	2,005 SF
118 SF	208 SF
1,838 SF	2,213 SF



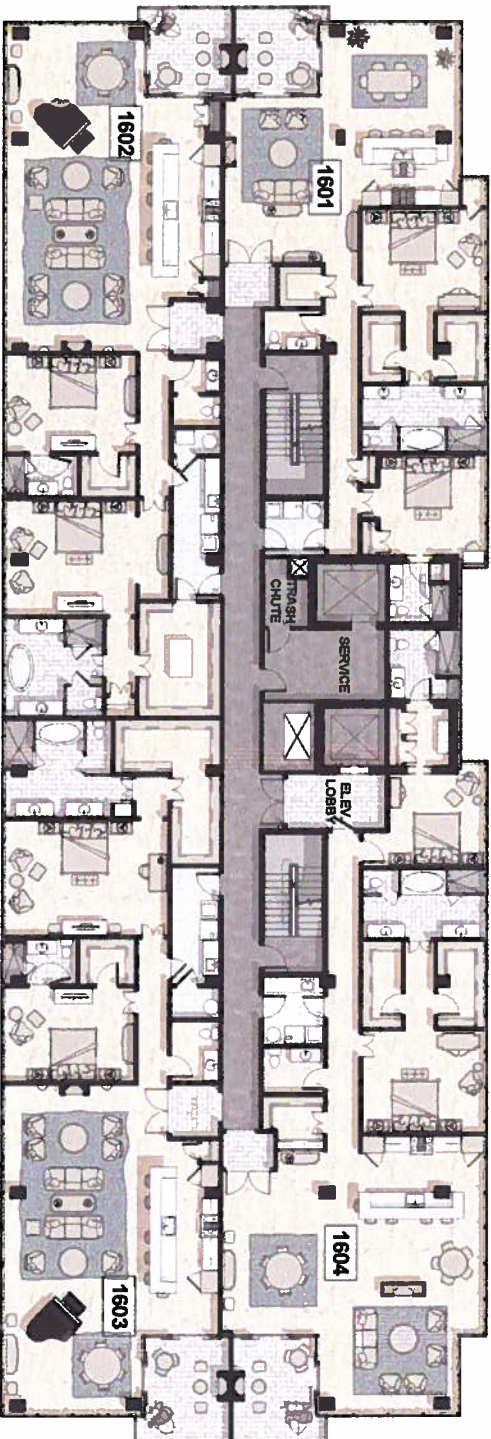
**CENTREPOINTE**  
A Webb Companies Development

## CONDO LEVEL 3

CentrePointe: Hotel and Residential

RABUN RASCHE RECTOR REECE

9/12/14



GROSS INTERIOR AREA: 11,136 SF

1601:			
INTERIOR:	2094 SF	1603:	2597 SF
EXTERIOR:	136 SF	INTERIOR:	170 SF
TOTAL:	2230 SF	TOTAL:	2767 SF
1602:		1604:	
INTERIOR:	2607 SF	INTERIOR:	2513 SF
EXTERIOR:	136 SF	EXTERIOR:	170 SF
TOTAL:	2743 SF	TOTAL:	2683 SF

CentrePointe: Hotel and Residential

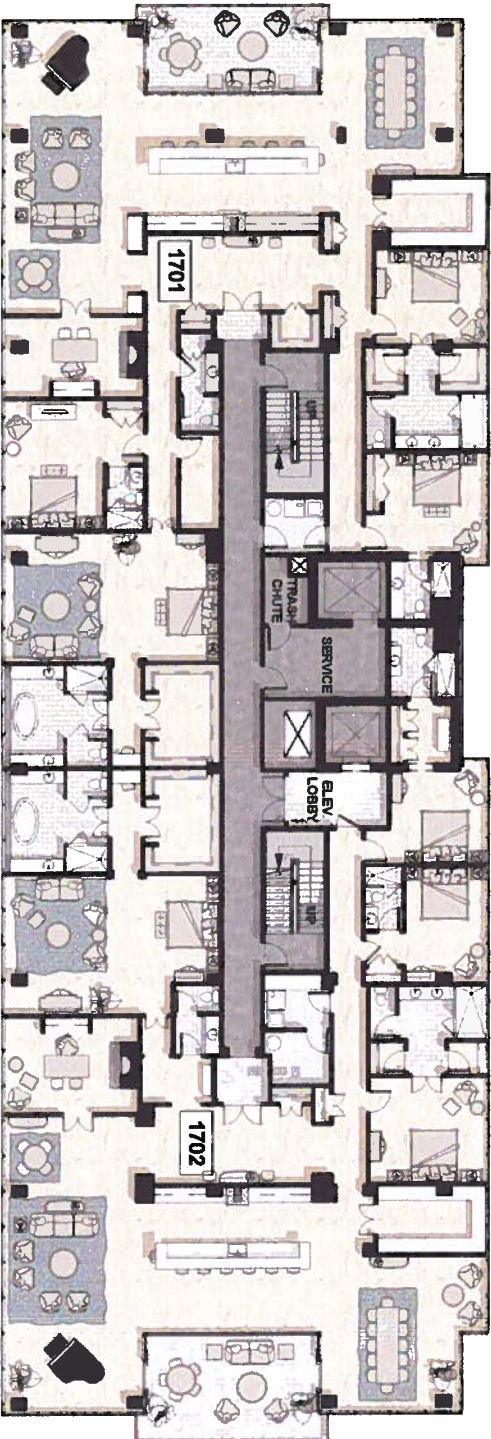
**CONDO LEVEL 4**

RABUN RASCHE RECTOR REECE

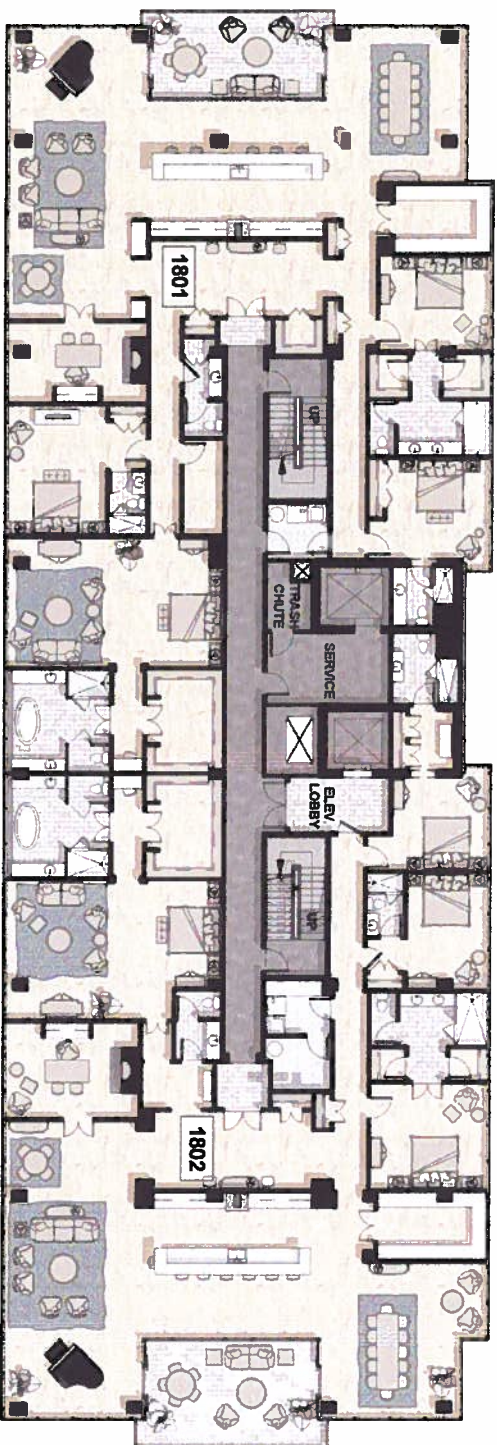
9/12/14

1701:	
INTERIOR:	4930 SF
EXTERIOR:	222 SF
TOTAL:	5202 SF
1702:	
INTERIOR:	4918 SF
EXTERIOR:	341 SF
TOTAL:	5299 SF

GROSS INTERIOR AREA 11336 SF







GROSS INTERIOR AREA 1136 SF

1801:	
INTERIOR	4930 SF
EXTERIOR	272 SF
TOTAL:	5202 SF
1802:	
INTERIOR	4958 SF
EXTERIOR	241 SF
TOTAL:	5199 SF

## CONDO LEVEL 5

CentrePointe: Hotel and Residential

RABUN RASCHE RECTOR REECE

9/12/14

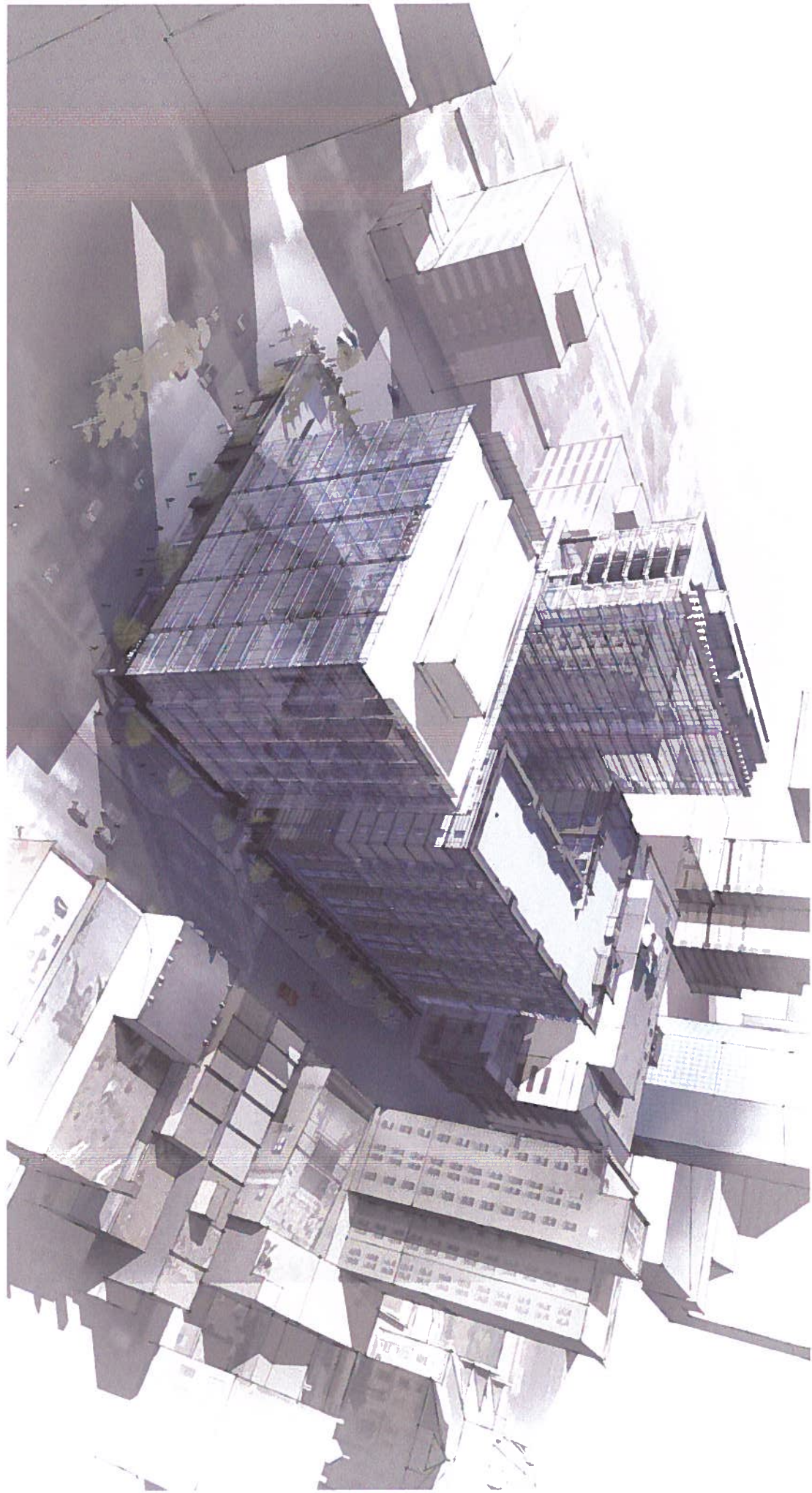










































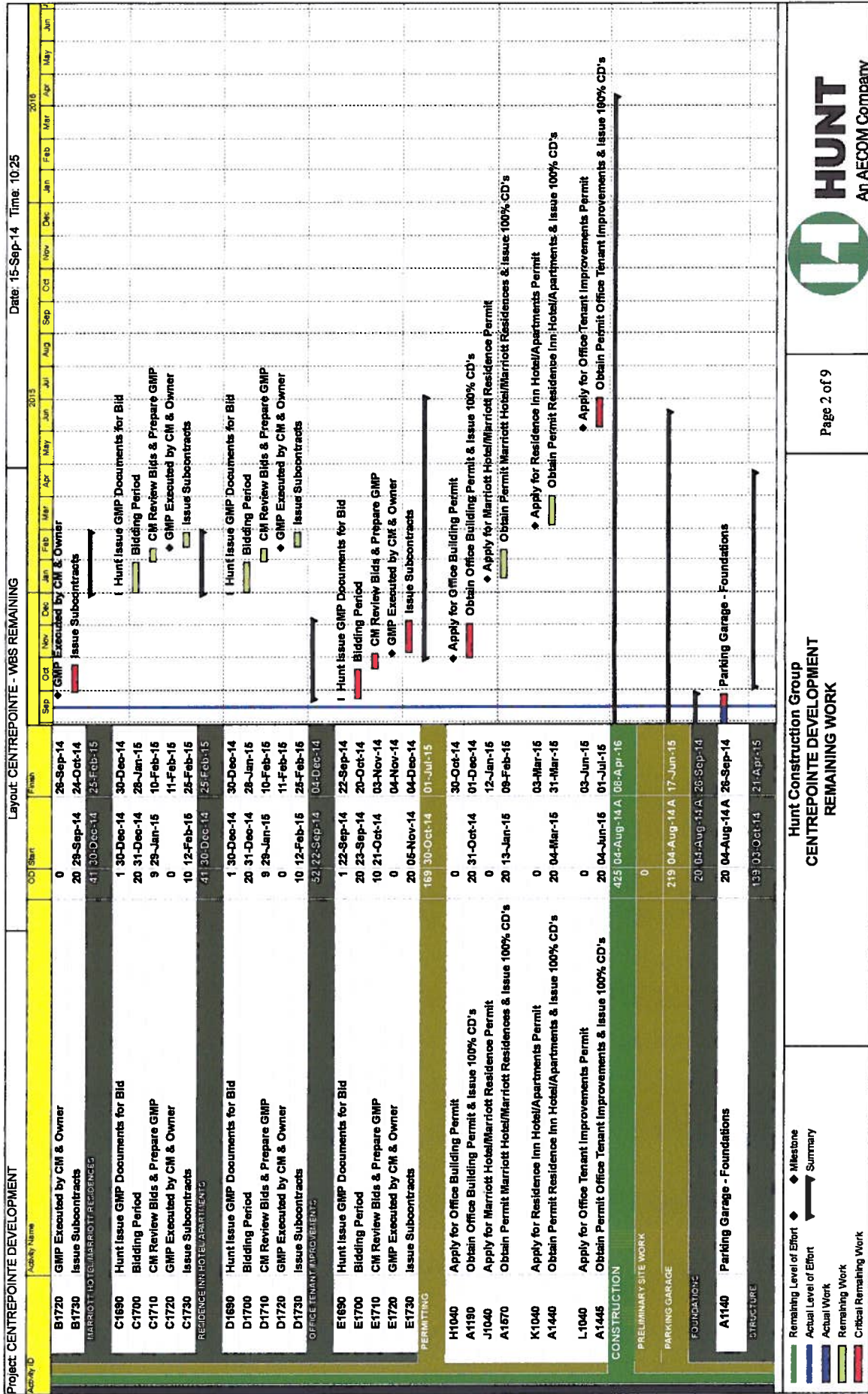






Exhibit D  
Project Schedule



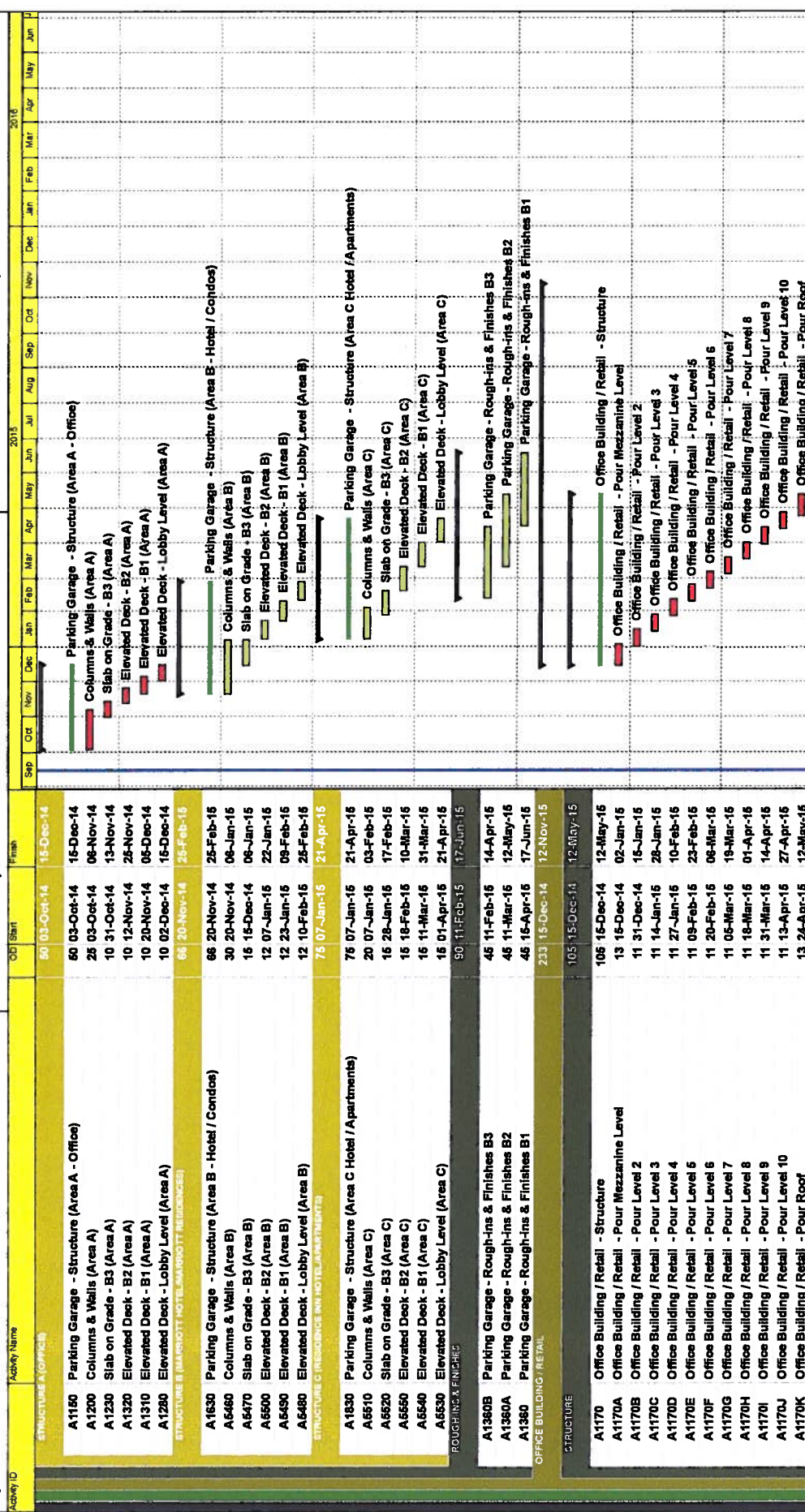




# Project CENTREPOINTE DEVELOPMENT

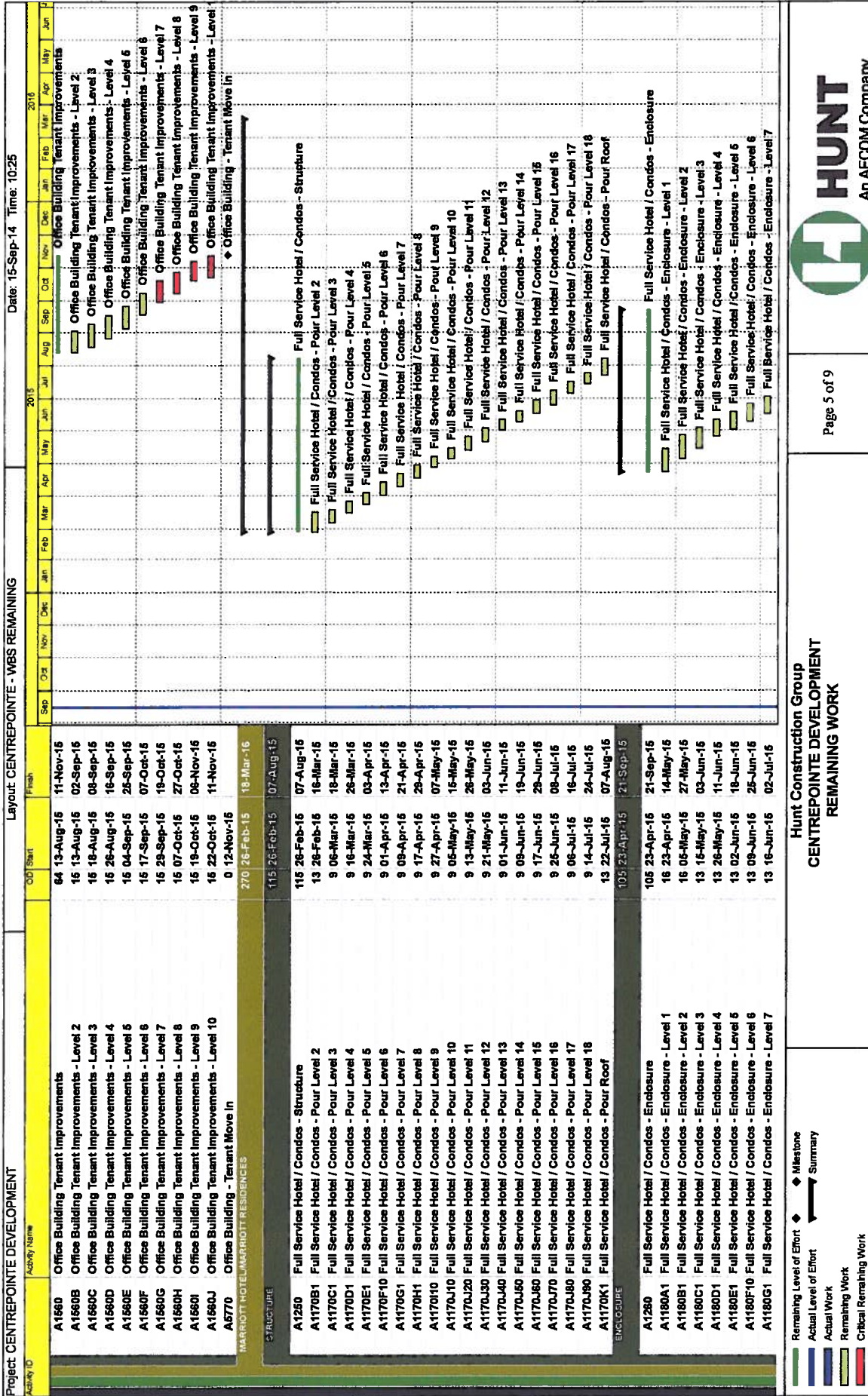
## Layout CENTREPOINTE - WBS REMAINING

Date: 15-Sep-14 Time: 10:25









## Date: 15-Sep-14 Time: 10:25

[illegible]

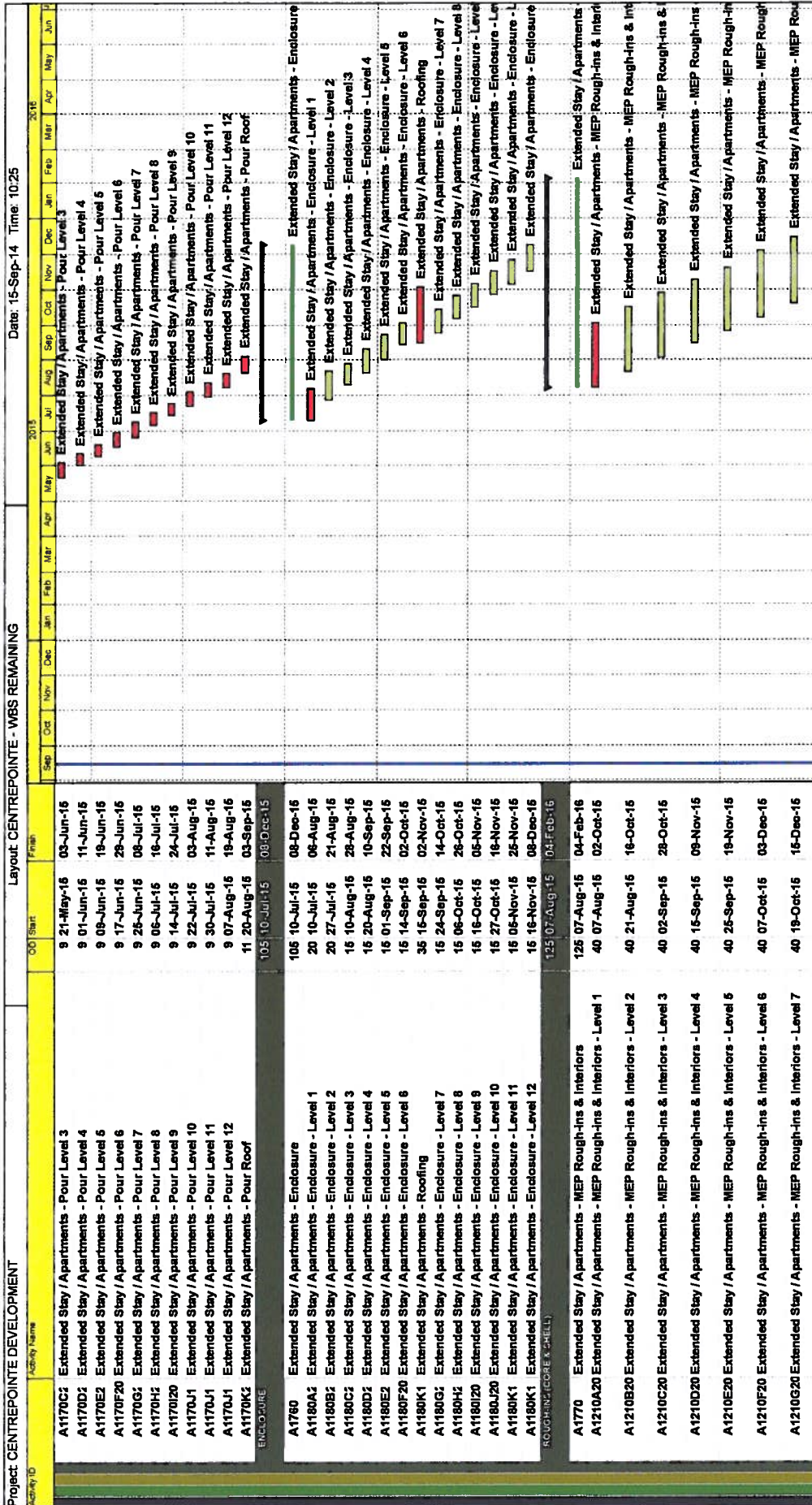
Page 6 of 9









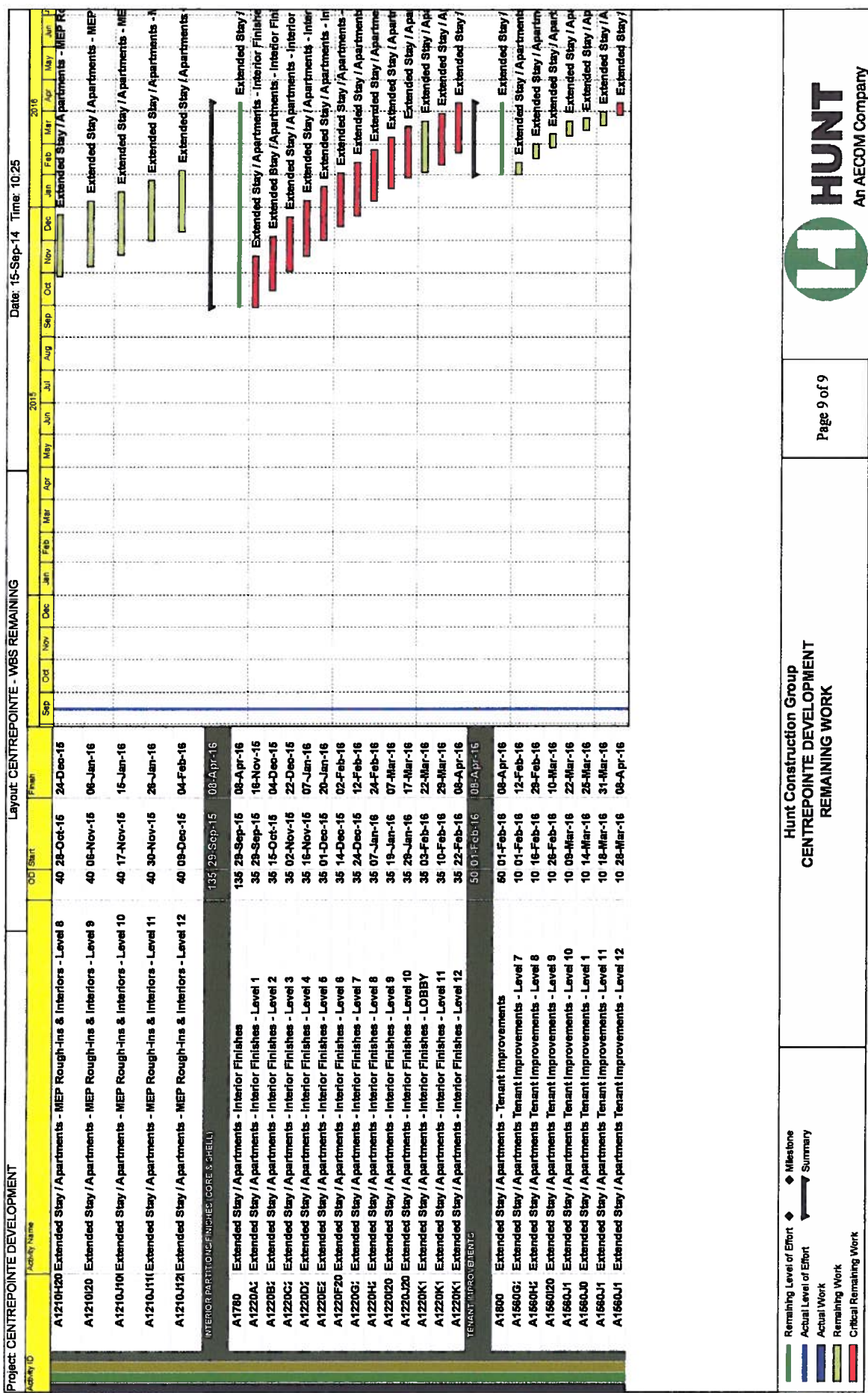


Remaining Level of Effort  
Actual Level of Effort  
Actual Work  
Remaining Work  
Critical Remaining Work

Hunt Construction Group  
CENTREPOINTE DEVELOPMENT  
REMAINING WORK

Page 8 of 9









## Exhibit E

### Officers and Members of Developer and its Affiliates

15440703\_3.docx

15440703\_3.docx

## **EXHIBIT E**

### **Officers and Managers of Developer and its Affiliates**

1. Fayette Land Company, LLC
  - a. Co-Manager: Ronald C. Tritschler
  - b. Co-Manager: Joe L. Rosenberg
2. CentrepoinTE Vertical, LLC
  - a. Manager: Ronald C. Tritschler
3. CentrepoinTE Parking Company, LLC
  - a. Manager: Ronald C. Tritschler
4. The Offices at CentrepoinTE, LLC
  - a. Manager: Ronald C. Tritschler
5. CentrepoinTE Hotel Partners I, LLC
  - a. Manager: Ronald C. Tritschler
6. CentrepoinTE Hotel Partners II, LLC
  - a. Manager: Ronald C. Tritschler
7. The Apartments at CentrepoinTE, LLC
  - a. Manager: Ronald C. Tritschler
8. The Penthouses at CentrepoinTE, LLC
  - a. Manager: Ronald C. Tritschler